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The Solicitors' Journal.

LONDON, SEPTEMBER 23, 1871.

THERE IS A SINGULAR VARIATION in the phraseology of the 1st section of the Married Women's Property Act, which speaks only of the "wages and earnings" of women engaged in trade or business separately from their husbands; but uses the words "money or property," with respect to the acquisitions of married women, "through the exercise of any literary, artistic, or scientific skill." This seems to have given rise to the argument that furniture bought with the earnings of a married woman carrying on a separate trade was not within the section. An execution creditor of a married woman carrying on trade separately from her husband, seized goods, which had been acquired by her labour, but which were also claimed by the holder of a bill of sale from her husband. Were they within the protection of the statute, or did they belong to the husband, and through him to the holder of the bill of sale? On an interpleader summons by the sheriff, Mr. Justice Brett appears to have entertained much doubt, and the matter stood over; but the execution creditor on its coming on again declined the issue, perhaps not thinking the game worth the candle. We can hardly think the Court will give so narrow a construction to the word "earnings" as not to allow it to include those things into which the money produced by the married woman's labour has been turned; but for the present the point remains undecided, and it cannot be denied that the careless wording of the Act gives much colour to a construction, which can scarcely be supposed to give effect to the meaning of the Legislature.

IN A LETTER to the *Times* Mr. Hopwood has certainly hit a blot in the New Jury Act, which his critics have not succeeded in disposing of, although it must be allowed that his proposed remedy by way of construction is a violent one. It is certainly highly improbable that the Legislature should either have intended to include in the list of special jurors so large a number as the qualification of business premises rated at £100 would introduce; or that, if it had intended this, the provision should have been so absurdly dislocated from the earlier clause of the same section (section 6), which gives the qualification to occupiers of private dwelling-houses, rated at precisely the same sum under identical circumstances. The reasoning of "Summum Jus" that "premises other than a farm" do not include a dwelling-house, "because even within the boundaries of a town a house might be occupied with a piece of land which might be described as a farm," is inscrutable. How can the fact that something may be described as a farm, show that what is not that something, nor can be described as a farm (for instance a mere dwelling-house without land, or, what Mr. Hopwood really complains of, a shop), is not included in the description "premises other than a farm?" Neither do the observations of "Stuff Gown" quite meet the difficulty. Admitted that the special jurors are not withdrawn from the common jury list, yet if in that list they are marked as special jurors (section 11) they may very possibly not be summoned on common juries. At the same time it is impossible to accept Mr. Hopwood's proposed division of the section into two parts. The whole context is against it; his supposed second part ought to have "elsewhere" in its introduction, instead of which the word only occurs at the end of the first member; it ought to begin with some word referring to the person, instead of which it begins with words describing his house, which shows that it is not a new clause but a part of the same clause with what precedes it; moreover, if the whole section were so divided, the first four qualifications would not exist except in towns of 20,000 inhabitants, and elsewhere the persons owning the first two at least might very possibly not be qualified at all. Indeed there are almost as many reasons against it as there are words in the section. The only remedy, if the Legislature did not really mean what it seems to have said, is to amend the section by inserting after the words "premises other than a farm," the words "elsewhere than in a town containing 20,000 inhabitants."

ON SATURDAY last the Forestal Court of Epping Forest was opened, and on that day it seems to have pursued its labours with activity, adjourning on its rising to the 26th October. The revival of this ancient jurisdiction in such unusual vigour may give rise to some curious points of obsolete law. The present court is described as a "forestal court of attachment," and is apparently the first of those described by Lord Coke in cap. 73 of the 4th Institute. In that chapter (where, as he truly says, he has "respected matter more than method") the very learned author describes the forestal tribunals in a not very coherent or consecutive manner. The Court of Attachments or the Woodmote Court (at which offenders may be compelled to appear by attachment) is, he says, held before the verderers every forty days (the period of the present adjournment of the Court) and is thence called the Forty-day Court; and at this court the foresters "bring in the attachments *de viridi et venatione* and the presentments thereof, and the verderers do receive the same and enrol them, but the Court can only inquire but not convict" (except, says Manwood, as to trespasses under the value of fourpence). We observe that on Saturday a claim was made by or on behalf of the lord warden of the forest to preside, but was disallowed; no such right appears to be sanctioned by Lord Coke or by Manwood; on the contrary, the more important Court of the Swanimote is presided over, not by the lord warden, but by the steward. The steward meanwhile claimed the less dignified but more lucrative office of clerk, but this claim also was rejected. What is the effect of the enrolment of the presentments at the Court of Attachment does not clearly appear; for it seems that at the Court of the Swanimote held thrice in the year before the verderers as judges by the steward, the foresters still have to present their attachments, and the freeholders within the forest "are to appear and make inquests and juries;" and "this Court may not only inquire, but convict also, *but not give judgment.*" Nay, more, it appears that the presentment of this Court is conclusive and cannot be traversed. But for the *judgment* it seems necessary to resort to the justice in eyre at the "justice seat holden before the chief justice of the forest," "which court cannot be kept oftener than every third year," and meets after a forty days' summons. One summons is directed to the sheriff; another "*custodi forestæ*" (*i.e.*, to the Chief Warden of the Forest), which latter, first, summons all the officers of the forest to bring with them all the records, &c., and secondly, summons all persons claiming any liberties or franchises within the forest to show how they claim them. This Court is to inquire and determine all trespasses within the forest and all claims of franchises, privileges, and liberties. It seems then that the inquiring of trespasses, &c., in this court may be in two forms, one an original inquiry on indictment or presentment before the chief justice, by a jury, and not found by the Swanimote, which may be traversed, "because it is

not presented but by one jury"; another on the record of the finding by the Swanimote, which cannot. There seems also to have been a form of inquiry, which was prosecuted (presumably by means of indictment) by the regardars of the forest, who were to go through the forest and make their view before the sitting of the Court, to supply the omissions of the foresters. The judgment of the Court, however, was not final; for if a claim of privilege was unduly allowed the commoners had the power to remove the record by *certiorari* into the King's Bench, and those whose claims were disallowed might have a writ *de libertatibus allocandis*. In the course of this effort to secure the rights of the commoners of Epping Forest against encroachment we may, perhaps, learn something more definite about these obscure and antiquated proceedings, and about the authority of the justice in eyre for the forest (the last of his kind, as Lord Coke says in the 33rd chapter of the 4th Inst.), whose authority was recognised so late as the year 1846, in the case of *R.* v. *Conyers* (8 Q. B. 981). In the present proceedings, however, the officers and tribunals of the forest are probably guided by their own precedents and records, which seem to come down to the year 1848, when their last forest court was held.

As to the officers of the forest, the verderers are "to be chosen in full county by the freeholders in the same manner as a coroner;" the verderer "ought to be an esquire or gentleman of good estate and learned in the laws of the forest;" and his office is compared by Manwood to that of a coroner in that he ought to make inquest *super visum corporis* of a slain deer or a felled tree. As to the chief justice (like the Chancellor of the Duchy), he is "commonly a man of greater dignity than knowledge in the laws of the forest" (the Right Hon. Thomas Grenville held that office in 1843, and combined with it the office of warden; see *R.* v. *Conyers*, 8 Q. B. 981); for which reason other persons are associated with him where justice seats are to be held, who with him are called *Capitales Justiciarii Forestæ*. His powers seems to have been very wide, but will scarcely be exercised in their full extent by any one who may fill that office at the present day.

ADVANCED FREIGHT.

The case of *Byrne* v. *Schiller* (Ex. Ch. 19 W. R. 1114, L. R. 6 Ex. 319) settles with the authority of a court of appeal the rule long since followed in the courts of first instance, that advanced freight cannot be recovered back by the shipper if the goods are lost by the perils of the sea. Several members of the Court, especially Cockburn, C.J., appear to have pronounced their judgment with reluctance, and in deference only to the current of authority. The objections to it were twofold. First, that it was contrary to principle that one who had paid money for a consideration which failed should not be entitled to recover it back. This, however, begs the question of what is the consideration. Certainly, if freight means something which is earned by the carriage of the goods to their destination and not otherwise, then, if the goods, in respect of which freight is paid, are not so carried, the consideration is not performed and the freight is not earned. But there is nothing to prevent a man from earning a sum of money by agreement with another for taking his goods on board and doing his best to carry them to their destination, subject to certain contingencies; and if, under such an agreement, he does so take them on board and do his best to carry them, then, although, owing to those contingencies, they never reach their destination, the consideration does not fail, for the consideration was not the carrying them to their destination in all events, but the carrying them, subject to certain events which have happened. And if this is the agreement between the parties, it cannot alter the case or deprive the shipowner of the sum he has stipulated for, that they call this sum "freight," any more than it can deprive him of his right to payment for an empty vessel because the sum to be paid is called "dead freight." To insist that, because the word freight is used (and popularly and commonly used) in such a contract, therefore the consideration must necessarily be the actual carrying the goods to their destination, and can be nothing else, is to worship technicality; but if this assumption fails, then the whole argument about failure of consideration fails with it. The question really is, what was the contract? and the answer to that question must be obtained by asking further, what is the inference to be drawn from the fact that pre-payment is stipulated for? Now, when money is to be paid for work done, it naturally becomes due only when the work is done, and as money is not usually paid before it is due, the payment of money at the commencement of the performance of a work or service lays the basis for an inference, which may vary according to circumstances, and which may or may not be an inference bearing upon the contents of the contract. But if, for instance, a man received a heavy sum of money to convey a message through the lines of the enemy, and he were captured or killed on the way, so that the message never reached its destination, could he or his representatives be sued for the money under the magic formula of *causâ data causâ non secutâ*? The contract would scarcely be so interpreted. If, then, a man agrees to bear a cargo through the perils of the winds and waves, but stipulates for payment beforehand, it would be no very extraordinary inference that it was intended he should not, in the event of shipwreck, be under the obligation to repay that sum as well as suffer the loss of his ship, on which that very sum had, perhaps, been already expended. Jurists, however, have not only held it unjust to draw this inference, but they have also held it inexpedient to allow it to be drawn, lest it should encourage captains in fraud and negligence; or rather, perhaps, because they held it inexpedient, they have refused to draw it; for if they had held it strictly unjust (which must mean contrary to the contract) there would have been no need to resort to the argument of inexpediency. But since they did not feel entitled to go so far as to disallow such a contract if expressly made (which shows they did not consider it an unconscionable one) they gave effect to an express stipulation that the prepaid freight should not be returned in the event of loss of the ship, and so in reality vacated their own rule, at least, so far as concerned the only part it could at all serve to guard against, of the evil it was designed to check; for the fraudulent captain would certainly take care to obtain the insertion of the necessary words. They thus, at any rate, secured to the shipper that he should enter into the contract with his eyes open, and that he should not be deprived of his right to recover prepaid freight by the mere fact of its prepayment alone; but they admitted that the additional clause was of constant occurrence, and that the exception made the rule of little practical value. And it is obvious that if the argument about public policy and encouragement to misconduct were of any real substance, it would go to disallowing such a stipulation altogether. It is in this modified form, however, that the rule prevailed in Europe, was adopted in America by Chancellor Kent and has been since followed there, and has been incorporated in all the foreign mercantile codes. And this was the second ground for the reluctance of some members of the Court of Exchequer Chamber to follow the English rule; though it could not prevail on them to hold the contract to be anything but what, by the well-established English custom, it was, of course, meant by the parties to be. It may produce, no doubt, a certain amount of inconvenience, especially in matters of marine law, that different constructions should in different countries be put upon similar instruments; that, for instance, an English shipowner making a charter in a foreign port, or a foreign shipper chartering a vessel in an English port, should unexpectedly find himself, in the same event, the one unable to retain, the other unable to recover the sum of money prepaid. But it is very doubtful whether the

article ought not rather to be withdrawn from the foreign codes than introduced into the English. What the contents of a contract are ought to be determined by its express words, or, where express words fail, by usage; and there seems reason to think that, but for the interference of lawyers, the persons interested in the matter would in foreign countries have put the same construction upon the transaction of prepaid freight that has here been adopted from commerce into law. If the principle of failure of consideration is really applicable, that is, if it is fairly to be assumed to be the meaning of the parties that the shipper shall have his money back, if from any cause whatever his goods are not carried to their destination, there is no occasion for any special rule; the principle is perfectly well known. But if, on the other hand, as would appear from the alleged frequency of the additional stipulation, the parties coming together are quite prepared to enter into that contract, so that it is probable they would of themselves understand the contract in th at sense even without express words, there is no occasion for the law to hold up its warning finger to the shipper, and, by requiring express words, caution him not to do what he is quite prepared for, and which the shipowner will naturally demand. If, however, the warning has its effect and deters him from entering into a charter on those terms, it is a further question whether it is expedient to do so; and whether, since the only legal effect one way or the other will be to shift the right to insure (which of itself puts an end to the whole supposed safeguard against the shipowner's dishonesty, since any act which would forfeit his policy would also forfeit his right to retain) it is not more natural and more convenient to allow the man who has already paid his money to watch over the security of his venture, and the man who has got his money to expend it in the most advantageous manner, without the liability to reimburse it on some future contingency.

FIXTURES.

No. III.

The notorious case, however, of *Hellawell* v. *Eastwood* (6 Ex. 295), a case between landlord and tenant, where machinery fixed into the floor with molten lead was held not privileged from distress as a fixture, stands in contrast to these cases, unless it be true that tenant's fixtures are distrainable, as to which it would be perilous to decide. The case has been already remarked upon. Another case of trover, *Davis* v. *Jones* (2 B. & Ald. 165), shall be remarked on below.

From these cases, and especially from *Mather* v. *Fraser*, *Longbottom* v. *Berry*, *Cullwick* v. *Swindell*, *Boyd* v. *Sharrock*, *Place* v. *Fagg*, *Ex parte Belcher*, *Rex* v. *St. Dunstan's*, *Wilde* v. *Waters*, and *Winn* v. *Ingleby*, it may be inferred that any annexation to the soil, or to the walls of a building, though only by nails, screws, plugs, &c., is sufficient to give the article so annexed the character of a fixture, provided there be nothing in the character of the article, or in the circumstances, to the contrary. But since such considerations as these last mentioned may prevent the thing from acquiring, by this annexation, the character of a fixture, it will be necessary to examine what are the considerations which will have that effect.

Before doing so, however, it will be more convenient to notice the case of things, not themselves physically annexed, becoming fixtures by reason of their forming part of that which is.

Thirdly, therefore, if, of that which is a single thing, one part is annexed to the soil, the remaining part, though removable at pleasure, without any act of unfastening, and though temporarily removed or lost, will nevertheless be reckoned also a fixture. The question therefore here is, whether the unfixed thing is or is not a part of that which is fixed. The most common and obvious instance on the one side is that of a key, which belongs to its lock (11 Co. 50, b., in *Liford's case*); the best instance upon the other side is that of the thing in question resting in or upon a foundation or a hole made for it in the soil, as in the cases mentioned under the first head. Between these two points there is much room for diversity of opinion, nor are the cases altogether consistent. The case of a millstone, removed in order to be picked, or for any similar temporary purpose, obviously falls within the first class, and seems to have been decided as early as 14 Hen. 2 (see *Liford's case*, 11 Co. 50, b.; Shep. Touch. 89, 90; *Place* v. *Fagg*, 4 M. & R. 277). The case of the cover of a well is another obvious instance; it appears in the Digest, xix. 1, 17 (8), and was referred to in *Fisher* v. *Dixon* (see 12 Cl. & F. at p. 329); but it would be otherwise with respect to a bucket not fastened to the rope, or with respect to a pump not solidly or firmly affixed (*Grymes* v. *Boweren*, 6 Bing. 437, a case between landlord and tenant, where the pump was treated as an entire thing, and not a part of the well). It will not be out of place to cite here the following passages from the Digest, which appear to express accurately the English law:—"*Œdium autem multa esse quæ ædibus adfixa non sunt ignorari non oportet, ut puta seras, claves; claustra*" [called in D. xxxiii. 7, 12 (24), "*domus portio*"] (D. xix. 1, 17). "*Opercula puteorum . . . quamvis non sunt adfixa*" [D. xix. 1, 17 (8)]. "*Ea quæ ex ædificio detracta sunt ut reponantur ædificii sunt; ut quæ parata sunt ut imponantur non sunt ædificii*" [D. xix. 1, 17 (10)]. These passages, it may be observed, occur under the heading of "Actions arising out of the Contract of Sale" [see also the passage cited below from D. xxxiii. 7, 12 (25)]. The same principle was intimated, but not clearly developed, in *Fisher* v. *Dixon* (12 Cl. & F., per Lord Brougham, at p. 329). It was applied by Wood, V.C., in *Mather* v. *Fraser* (2 K. & J. at p. 559), to the case of an instrument running freely upon a fixed bed; and in *Longbottom* v. *Berry* (L. R. 5 Q. B. 133, 139, No. 42) to a warping machine running upon rails used for that and for no other purpose. The two last cases certainly go very near to the line. On the other side of the line, the case of *Davis* v. *Jones* (2 B. & Ald. 165), a case of trover between landlord and tenant, is a somewhat singular one; for there jibs, which could not be removed without injury to them, and which certainly seem to have formed essential parts of fixed machinery, were allowed to be recovered in an action of trover. It is to be observed with respect to this case that Abbott, C.J., delivering the judgment of the Court (at p. 167), treats trover as lying, as between landlord and tenant, in respect of things for which it would not lie between other persons—a notion inconsistent, as it appears, with subsequent cases (see above). But although the case does not in terms decide that in any other than this modified sense the things were personal chattels, it seems to involve the view that they were not part of the fixed machinery. Both propositions seem doubtful.

In general, it may be said that if the same fixed thing serves indifferently the use of many movable articles of the same kind (as rails on a line serve indifferently the whole rolling stock of the line, or as a press may serve press plates and press papers, which are continually changed (n. 36 in *Longbottom* v. *Berry*, L. R. 5 Q. B. at pp. 136, 139), the movable things so used with the fixed thing do not become part of it, but retain their original independent character. And the same with respect to tools or other movable instruments which are of a general nature and use, although actually appropriated to the use of a particular fixed thing, as the loom-machine, n. 42 in the case last cited (L. R. 3 Q. B. 133, 139). But if a movable thing is not an entire thing in itself, but has only a purpose and object related to some fixed thing to which it is appropriated, then, notwithstanding it is possible it might be applied even in its existing shape to some other thing, yet it is so much a part of the fixed thing as to have lost its independent character, which it does not regain until it has, by some act of disappropriation, been dissociated from that purpose (see the case of the hydraulic presses in *Longbottom* v. *Berry* (L. R. 5 Q. B. 131, 139, n. 5). That an actual appro-

priation is necessary to ground this character of fixtures in things not themselves affixed is obvious. As to the Roman law to this effect see the passage above cited from D. xix. 1, 17 (10), with which may be compared the following passage under the heading of legacies of furniture or stock:—"*Specularia quoque adfixa magis puto domus esse partem; nam in emptione domus et specularia et pegmata cedere, sive in ædificio sunt posita, sive ad tempus detracta. Sed si non sint reposita, ad hoc tamen sint ut suppleantur si qua desint, instrumento potius continebuntur*" (D. xxxiii., 7, 12, [25]). Similarly, in *Ex parte Astbury* (L. R. 4 Ch. 630, 635), loose rolls belonging to a rolling-machine (including a duplicate set of rolls) were held part of the machine, but other rolls, destined to the use of the machine, but not yet fitted to it, were not so treated.

In considering when one thing is to be reckoned part of another, it has become necessary to consider the question of design or purpose. The examination of the question in this narrower limit opens the way to consider—

Fourthly, that in determining whether a movable thing has been made by annexation a fixture, the character of the thing and the purpose of the annexation must be considered. In *Hellawell* v. *Eastwood* (6 Exch. 295), the *principles* laid down in which have been fully accepted and acted upon, it was said that two elements must be taken into consideration in determining whether or not a thing has been made a fixture: first, the mode of annexation; and second, its purpose. Now, it has been already shown that any real affixing, though only by nails or screws, is enough of itself to give the thing so affixed the character of a fixture. The effect, therefore, of a consideration of the purpose is chiefly to take that character away; although, as above shown, where there is not actual annexation, the purpose or design of a thing may make it a fixture, as being part of a fixed whole, and, in some cases of very slight doubtful annexation, it may turn the scale upon that side. Now, when the purpose or design of the annexation of a thing is spoken of, it is plainly not the design of making it or not making it a fixture in the legal sense that is meant. The object of inquiry is the purpose of the annexation as a matter of fact—that is, the degree to which it is intended to prevail over the naturally movable character of the thing annexed, and make it, in fact, irremovable, or the degree of permanence and durability to which the annexation is designed. But this, again, is itself to be determined to a large degree by the amount and character of the physical connection established; and certainly this may be of such a kind as to overcome almost any inference to the contrary which would arise from the character of the thing. Thus, a fresco or painting executed upon the walls themselves of a house or upon the cement which adhered to and covered them would be, of course, a fixture (or rather perhaps part of the walls themselves), whilst a framed oil painting would belong to the class the furthest removed in character from fixtures. But yet even such an oil painting might be so far incorporated into the wall as to lose its movable character and become a fixture, as in *D'Eyncourt* v. *Gregory* (L. R. 3 Eq. 382, 395). Annexed things, then, being adjudged fixtures or no fixtures by reference to the purpose of their annexation, that purpose is itself ascertained partly by the character of the things affixed, and partly by the character of the annexation itself. This latter element will be most conveniently dealt with in the first place, being the one most related to the contents of the previous discussions.

First, therefore, with regard to the character of the annexation, a solidity of connection making separation difficult, and especially what may be termed a continuity of structure with the permanent building, will indicate a purpose of permanent fixedness. This speaks for itself, and does not admit of much comment.

It is well illustrated by the case of *Buckland* v. *Butterfield* (2 Br. & B. 54), where a conservatory built into a brick foundation and into the adjoining wall of the house, though of the class of ornamental fixtures, was held even as between landlord and tenant to be irremovable; and by *D'Eyncourt* v. *Gregory* (L. R. 3 Eq. 382), more fully noticed below.

But in the next place, a material circumstance will be the more or less essential or accidental character of the annexation. Thus, a thing may become itself for the time being immovable only by reason of its connection with some other thing not part of it, though used in conjunction with it, as a desk through which a pipe passes to a gas lamp secured into its top, but which is not otherwise fixed; such a desk has been held not to be a fixture (*Longbottom* v. *Berry*, L. R. 5 Q. B. pp. 134, 139, n. 45). Similarly, in the same case (L. R. 5 Q. B. 129, 139, n. 30), washing machines which were rendered for the time immovable by reason merely of the ends of the pipes which supplied them with water being beaten flat upon their inner sides, were held not fixtures, there being no design apparent of steadying or fixing the machines by this means. On the other hand machinery fixed for more convenient working is an obvious instance on the other side. "In the present case the machinery was nearly all firmly fixed to the building, in what the Vice-Chancellor, in *Mather* v. *Fraser*, calls a *quasi* permanent manner—viz., by screws, or bolts, or soldered with lead. . . . This fixing was clearly necessary, for they could not otherwise be effectually used, as, for the same reason, the fixing was obviously not occasional but permanent. . . . It is difficult to conceive that a machine, which at all times requires to be firmly fixed to the freehold for the purpose of being worked, could truly be said never to lose its character as a movable chattel" (*Longbottom* v. *Berry*, L. R. 5 Q. B. 138). In such a case the fact that it has been from time to time thus fixed in different places is plainly of no consequence (*Boyd* v. *Sharrock*, L. R. 5 Eq. at p. 79).

Thirdly, in judging of the purpose of annexation the character and general use of the immovable to which the annexation is made, as well as the character and use of the article affixed, is to be considered. And these two must commonly be considered together; since it is for the most part on the character of the movable thing *as compared* with the character of the immovable, that the decision of the question depends. Nevertheless in some cases the one element, in some the other, comes principally or exclusively in view.

With regard then, first, to the character of the immovable; it is obvious that, the general use of a building being ascertained, those things which conduce or are subservient to that use will be more readily assumed to have been affixed with an intention of permanence than those which do not subserve that common end. Thus, if a building be used as a dwelling house, things suitable to a dwelling house will more readily become fixtures; if it be used as a mill or manufactory, the same inference will be drawn with respect to those things which form part of the machinery or assist in its operations. Reasoning based on these considerations will be found applied in the cases already cited of *Place* v. *Fagg*, *Mather* v. *Fraser*, *Boyd* v. *Sharrock*. By an application of this kind of consideration to the construction of a mortgage of a mill in *Kay* v. *Hutchinson* (23 Beav. 413), the Master of the Rolls arrived at the conclusion that only what might be called the fixed furniture of a *mill* simply, but not that part which was peculiarly adapted to its use as a *silk mill*, passed; a decision, however, which, after the subsequent case of *Haley* v. *Hammersley* (3 De G. F. & J. 587), before Lord Campbell, must be accepted with reserve.

The principle is indeed extremely difficult of application. The construction of it which, with reference to machinery and such like, would make only those things fixtures which were destined to develope the resources of the land, was decisively exploded in *Fisher* v. *Dixon* (12 Cl. & Fin. 329), a case between heir and executor; and after what was said in that case, with the approval given in it to the decision in *Lawton* v. *Salmon* (1 H. Bl. 260, n.), and the decisions in recent cases already referred

to, it is impossible to regard as of any weight early cases, in which things so permanently fixed, and of such customary and common use in dwelling-houses as furnaces and stove backs, were held to pass to the executor and not to the heir (*Harvey* v. *Harvey*, 2 St. 1141; *Squier* v. *Mayer*, 2 Free. 249). A case very singular in its circumstances, and in which great weight was given to this aspect of the question, was *Parsons* v. *Hind* (14 W. R. 860), which will be more fully noticed below.

In the next place, under the head of the purpose of annexation, the character of the thing affixed sometimes occupies the prominent place; and particularly where the thing belongs to the class of ornaments. Even here, as has been already observed, the annexation may be such that the character of the thing yields to it. Thus, in a case of ornamental fixtures, even as between landlord and tenant, it was said, "On the one hand it is clear that many things of an ornamental nature may be in a degree affixed, and yet, during the term, may be removed; and on the other hand, it is equally clear that there may be that sort of fixing or annexation, which, though the building or thing annexed may have been merely for ornament, will yet make the removal of it waste" (*Buckland* v. *Butterfield*, 2 Br. & B. at p. 53).

(*To be continued.*)

LEGISLATION OF THE YEAR 1871.

CAP. XVIII.—*An Act to amend the law disqualifying attorneys, solicitors, and proctors in practice from being justices of the peace for counties.*

Whenever the office of county justice of the peace may have been first established, it seems pretty clear that its first statutory recognition was in the first year of Edward III., immediately after his assumption of the government, at the instance of his mother, Queen Isabella, in the lifetime of his father, and these officers seem to have been thought necessary to preserve the peace in consequence of the general unsettlement of men's minds by reason of the deposition of Edward II. by his wife and son. The statute of the 1 Edw. 3, c. 16, enacted that for the better maintaining and keeping the peace in every county, good men and lawful, which were no maintainers of evil, or barretors in the county, should be *assigned* to keep the peace. And from this date it seems to have been generally considered that the election of conservators of the peace was taken from the people and given to the King. By the oath of office the justices were required to swear that "they would not be of counsel in any quarrel hanging before them," but, beyond the inference that arises from this, there does not appear to have been, until comparatively recent times, anything to prevent attorneys being in the commission of the peace, if it pleased the Crown so to place them. As the sueing out the *dedimus*, which was a preliminary to the nominated person taking upon himself the office, was a voluntary act, no question could arise as to any *privilege* which an attorney might have had to claim exemption from this office if thrust on him *in invitum*; it seems clear, however, that such privilege did exist as regards the office of sheriff (who is *ex officio* a conservator of the peace), and it would seem in all elective offices, such as mayor and aldermen of municipal corporations, the privilege of an attorney, grounded on his duty as an officer of the courts to be present there, might have been claimed as relieving from the obligation of service (*Mayor of Norwich* v. *Bury*, 4 Burr. 2109).

By the Act of 5 Geo. 2, c. 18, s. 2, it was first distinctly enacted that no attorney, solicitor, or proctor, in any court whatever, should, from and after the 25th March, 1733, be capable to *continue* or be a justice of the peace within any county of England or Wales, during such time as he should continue in the business and practice of an attorney, solicitor, or proctor. This statute is repealed, as to attorneys and solicitors, by the Attorneys and Solicitors Act (6 & 7 Vict. c. 73), but the same terms are, as to attorneys and solicitors, re-enacted by section 33 of that Act. But by section 34 the prohibition is not to extend to any city or town being a county of itself, or to any city, town, cinque port, or liberty, having justices of the peace within their respective limits and precincts, by charter, commission, or otherwise; but in such places attorneys or solicitors may be justices of the peace in such manner as they might have been if that Act had never been made.

The present Act (section 1), from and after its passing, repeals section 33 of the statute 6 & 7 Vict. c. 73, and so much as remains in force of section 2 of cap. 18 of 5 Geo. 2 (the enactment above mentioned); but no person is to be capable of becoming or being a justice of the peace for any county in England or Wales (not being a county of a city or county of a town) in which he shall practise and carry on the profession or business of an attorney, solicitor, or proctor; and any person so practising in a city or town being a county in itself shall, for the purposes of this Act, be deemed to carry on such profession within the county within which the city or town or any part thereof is situate. Section 2 declares that a person shall be deemed to carry on his profession in the county, city, or town, in which he maintains an office or place of business; and the word "county" is to include a riding or division having a separate commission of the peace. Nothing in the Act is to affect coroners. Attorneys, solicitors, and proctors are henceforth, therefore, eligible for selection by the advisers of the Crown, for the office of justice of the peace of any county in which they do not, and so long as they do not *there* practise, their respective professions. Their rights and privileges in respect to appointments as city or corporate justices, of course, remain the same as before the Act.

CAP. XXVI.—*An Act to alter the law respecting religious tests in the Universities of Oxford, Cambridge, and Durham, and in the halls and colleges of those Universities.*

By the 9 Geo. 4, c. 17, the necessity of taking the sacrament as a qualification for certain offices (particularly corporate ones) was abolished, which was a relief chiefly felt by the body of Protestant Nonconformists. And by the 10 Geo. 4, c. 7 (commonly called the Catholic Relief Act), Roman Catholics were relieved from taking and making certain oaths and declarations which were considered by them inconsistent with their faith, as a qualification for secular offices and employments (with certain exceptions), but it was particularly provided (section 16) that nothing in that Act contained should enable any persons, otherwise than as they were then by law enabled, to hold, enjoy, &c., any office or place whatever, of, in, or belonging to any of the Universities of this realm, or any office or place whatever, and by whatever name the same might be called, of, in, or belonging to any of the colleges or halls of the said Universities, or to repeal the statutes, &c., which prevented Roman Catholics from being admitted thereto, or from residing or taking degrees therein. By the 17 & 18 Vict. c. 81, it was enacted (sections 43 and 44) that it should not be necessary for any person matriculating or taking the degree of Bachelor in Arts, Law, Medicine, or Music in the University of Oxford to make any declaration, or take any oath, any law or statute notwithstanding. But such degree was not to qualify for holding any office theretofore held by a member of the United Church of England and Ireland, and for which such degree had been a qualification, unless the oaths theretofore required should be taken. By the 19 & 20 Vict. c. 88 it was also enacted (section 45) that no person should be required upon matriculating, or on taking, or to enable him to take, a degree in Arts, Law, medicine, or Music in the University of Cambridge, to take any oath, or make any declaration whatever, but such degree was not (until the person obtaining it should have subscribed a declaration that he was a *bonâ fide* member of the Church of England) to

entitle him to be a member of the senate or hold any office either in the University or elsewhere, theretofore held by a member of the United Church of England and Ireland, and for which such degree theretofore constituted one of the qualifications. Hitherto, we perceive the action of the Legislature to have been extremely guarded. The present Act deals with the subject in a far wider spirit, and seems to give full practical effect to the doctrine of Blackstone, that the Universities are lay or secular, and not ecclesiastical corporations.

The preamble declares that the benefits of the Universities of Oxford, Cambridge, and Durham, and the colleges and halls now subsisting therein, as places of religion and learning, should be rendered fully accessible to the nation; that by divers restrictions, &c., many of her Majesty's subjects are debarred from the full enjoyment of the same, and it is expedient such restrictions, &c., should be removed, under proper safeguards for the maintenance of religious instruction and worship in the same. Section 2 defines the word "college," and declares that the word "office" is to include every professorship (other than of divinity), assistant or deputy professorship, &c., and (*inter alia*) headship of college or hall, fellowship, studentship, tutorship, scholarship, and exhibition. And any office or emolument not specified in that section, the income of which is payable out of the revenues of any of the said Universities or of any college within the same, or which is held by any member as such of any of the said Universities or any college within the same. By section 3 from the passing of the Act no person taking a degree (other than in divinity) in the Universities above named, or for exercising the rights and privileges which heretofore have been or hereafter may be exercised by graduates in the said Universities or any college thereof, or upon taking or holding or to enable him to take or hold any office in the said Universities or any such college, or in order to teach within any of the same or to open a private hall or hostel within any of the said Universities, for the reception of students, shall be required to subscribe any article or formulary of faith, or make any declaration, or take any oath as to his religious belief or profession, or to attend or abstain from any form of public worship, or to belong to any specified church, sect, or denomination, or be compelled to attend the public worship of any church, &c., to which he does not belong. But nothing in the Act is to render a layman or person, not a member of the Church of England, eligible to any office or capable of any right or privilege in any of the said Universities or colleges, which office, &c., at the time of passing of the Act, is restricted by Act of Parliament, or any statute, &c., of the University or college, to persons in holy orders, or remove any obligation to enter into holy orders, on account of such office. Nothing in section 3 is to open any office (not being an office mentioned in that section) to any person not a member of the Church of England, where, at the passing of the Act, such office was confined to members of such Church by reason of such degree being a qualification for holding such office.

By section 4 the religious instruction, worship, and discipline, now or hereafter to be established in the said Universities or the colleges thereof, is saved, except as expressly enacted by the Act. The governing body of every college, subsisting at passing of the Act, are to provide (section 5) sufficient religious instruction for all members in *statu pupillari* belonging to the Established Church. By section 6, morning and evening prayers are to continue to be used daily as heretofore in the chapel of every college, according to the order of the Book of Common Prayer, but the visitor of the college, at the request of the governing body, may authorise by writing from time to time an abridgment or adaptation of the morning and evening prayer for use on week days only. Attendance at lectures is to be excused (section 7) if objected to on religious grounds. Section 8 repeals the Acts and parts of Acts mentioned in the schedule to the extent and in manner therein defined, and any provision in *any* Act of Parliament or any statute, &c., of any such University or college so far as inconsistent with this Act is repealed.

CAP. XXVII.—*An Act to remove doubts as to the power of trustees to invest trust funds in debenture stocks.*

The object of this Act is to meet the practice of railway and other companies who have of late years found it to their interest to endeavour to raise by permanent debenture stock the whole or the greater part of the debt which they are authorised to incur on the security of mortgages or bonds, and which, whilst in that form, is liable to have to be repaid at periodical times, which may happen when the state of the money-market is unfavourable for that purpose, and so produce derangement and injury to the financial position of the companies.

After a recital that by divers Acts of Parliament, and more particularly by the Companies Act, 1863, and the Acts amending the same, companies are empowered to raise by *debenture stock* all moneys which they may be authorised to raise for the time being by mortgage or bond, and that doubts exist whether it is lawful for trustees authorised to invest trust funds in mortgages or bonds of companies to invest the same in such debenture stock. Section 1 enacts that a power before the passing of the Act, or at any time thereafter, given to trustees to invest trust funds in mortgages or bonds of a railway or any other company shall, unless the contrary is expressed in the instrument creating the power, be deemed to include a power to invest such funds in the debenture stock of a railway or such other company as aforesaid, and an investment of trust funds in debenture stock may be made accordingly.

We have in an article in this journal (*ante*, p. 670) pointed out our reasons for thinking that a class of cases which will arise out of the modern forms, sometimes employed in conveyancing, which contain an express negation of other than the securities there enumerated, will constitute an exception to the powers conferred by this Act, as being cases in which the "contrary is expressed in the instrument creating the power," and we still think the language of the Act invites this construction. The intrinsic distinction adverted to in that article, between the rights of lenders on mortgage or bonds, and the holders of debenture stock, tends, we think, to make the construction we have indicated the necessary one for cases in the category referred to. Where there are no negative words the object of the Act will be reached by the first section; but the language might have been more happily chosen for it is, at least arguable that as a power given to invest in mortgages or bonds of a railway company, *or* any other description of company, is to be deemed to include a power to invest in the debenture stock of a railway company *or* such other company as aforesaid, a power simply to invest in mortgages or bonds of a railway would authorise the investment in the debenture stock of *any* company and *vice versâ*. The rule *reddendo singula singulis* may rectify this ambiguity, but it would have been better if the language had been clearer.

The expression "trustees" is to include executors and administrators and any persons holding funds in a fiduciary capacity. The short title is "The Debenture Stock Act, 1871."

Mr. H. T. Lovegrove, a Gloucester attorney, has purchased the Cleeve-hill estate, near Cheltenham, from Sir John Pakington, for £20,000.

Mr. Isaac Butt, Q.C., of the Irish bar, and also a member of the English bar, has been returned to Parliament, without opposition, as member for the City of Limerick. Mr. Butt was called to the Irish bar in 1838, and obtained a silk gown in 1844, when of only six years' standing. From 1836 to 1841 he held the office of Archbishop Whately's Professor of Political Economy in the University of Dublin. He has recently become conspicuous as the leader of the movement for securing Home Rule for Ireland. Mr. Butt was called to the English bar by the Hon. Society of the Inner Temple in 1859.

RECENT DECISIONS.

PRIVY COUNCIL.

STATUTE OF LIMITATIONS—TENANCY AT WILL.

Day v. *Day*, P.C., 19 W. R. 1017.

The rule of law applicable to tenancies at will under section 7 of 3 & 4 Will. 4, c. 27, and by which the present case was decided, is expressed by Sir Joseph Napier, in delivering the judgment of the Court as follows:—"When the statute has once begun to run it would seem on principle that it would not cease to run unless the real owner, whom the statute assumes to be dispossessed of the property, shall have been restored to the possession. He may be so restored either by entering on the actual occupation of the property, or by receiving rent from the person in the occupation, or by making a new lease to such person, which is accepted by him; and it is not material whether it be a lease for a term of years, from year to year, or at will." This is a lucid comment on the words of the 7th section, which provide that the right of the original landowner to make an entry or bring an action against his tenant at will, shall be deemed to have first accrued, "*either* on the determination of such tenancy, *or* at the expiration of one year next after the commencement of such tenancy, *at which time such tenancy shall be deemed to have determined*." In the present case the defendant, under whose testator the testator of the plaintiff had become tenant at will, more than twenty-one years after the commencement of that tenancy entered upon the land, and was sued in ejectment by the present plaintiff. He attempted, contrary to the order of the sentence, to analogy and to authority, to construe the alternative of the statute as meaning "whichever shall *last* happen." But as this would have led to the absurdity that the original landowner might at any distance of time have determined the tenancy, and so evaded the statute altogether, it was necessary to limit the proposition by a proviso that this determination must take place before the lapse of twenty-one years after the commencement of the tenancy, thus allowing the time to begin running at the end of the one year, but making it begin to run afresh on a determination of the tenancy happening within twenty years after. In the present case the Court held that there had, in fact, been no such determination within the twenty years, but also expressly held that if there had been it would have made no difference; and considering that a tenancy is determined by any act inconsistent with it, and that a tenancy at will is, therefore, very easily determined unawares, and considering moreover that it is always determined by the death of either party, it is evident that such a construction as the defendant contended for would render the Act practically almost inoperative in its application to such cases.

COMMON LAW.

ARBITRATION—COSTS—EVENT OF REFERENCE.

Stevens v. *Chapman*, Ex., 19 W. R. 958, L. R. 6 Ex. 213.

What is the event of a reference? In *Gribble* v. *Buchanan* (16 C. B. 691) the costs of the cause were to abide the event of the cause, and the costs of the reference and award, the event of the award; by the award the plaintiff in the action got £80, and the defendant, upon other matters in difference, got £10; the plaintiff, therefore, got his costs in the action, but not wholly succeeding on the reference got no costs there; the Court in this following previous decisions. It would be much fairer and more reasonable if in such a case the rule commonly observed on interpleader issues, and often by arbitrators when they have costs in their discretion, were followed, and the costs were divided in proportion to the success; but the rule of *Gribble* v. *Buchanan* seems for the present fixed. In *Stevens* v. *Chapman*, however, the Court refused to extend it to a case where the costs of the cause were to abide the event of the reference, the costs of the reference and award being in the arbitrator's discretion, and where the defendant's claim upon the other matters in difference reduced the amount which the plaintiff was to receive from £259 to £17. Here the words "event of the reference" were treated as equivalent to "event of the reference of the cause," or "event of the cause," and the plaintiff was, therefore, allowed his costs of the cause. The result as to these costs was, in fact, precisely the same as in *Gribble* v. *Buchanan*, and the present case in no way interferes with that decision, for there the distinct mention of the two separate events made it impossible to give the same meaning to both. But for authority, however, even though the rule of apportionment were not adopted, a very different conclusion might have been reached in that case, and perhaps a more reasonable one; for the order might well have been construed as making the costs of the cause follow the result of the issues raised upon the pleadings, and the costs of the reference follow the determination of whether, upon the whole, the plaintiff was to receive or to pay. As it stands, however, *Gribble* v. *Buchanan* is a warning to plaintiffs not to adopt the form of order there used.

TITHE MODUS—TILLAGES.

Vicar v. *Dudman*, C.P., 19 W. R. 953, L. R. 6 C. P. 470.

If a man turns a few perches of his paddock into an orchard or a kitchen garden, does he make himself liable to pay tithe as for "tillages" under a modus which fixes an increased rate for land converted to that purpose? The Court of Common Pleas answers—No; that tillage means agriculture, and not "houses, gardens, and orchards," that is, it does not include such gardens and orchards as are reasonable appendages to a house, as distinguished from "orchards and gardens devoted to agriculture, such as the common market gardens." The distinction intended appears to be between such tillage as is carried on as a business and for profit, and such as is only the "ordinary accompaniment of a residence in the country," and which is usually anything rather than a business or profitable.

COPYRIGHT—JOINT AUTHORSHIP.

Levy v. *Rutley*, C.P., 19 W. R. 976.

The plaintiff claimed to be joint author of a play; but all that appeared was, that he had made some alteration in and additions to a play written by a person whom he had employed to write it. The Court held that there was no joint authorship; and it would certainly be strange if a man could thus have another writer associated with him against his will, as joint author of his transfigured production. What would constitute a joint authorship, the Court seemed to think it difficult to determine; but (following suggestions thrown out by several members of it) it would seem safe to say that unless there was either a common design originally, or a common re-arrangement or re-casting of the work (not merely suggested alterations adopted by the original author at his discretion), there would be no joint authorship either in a strict or a popular sense.

CONTRACT FOR PERSONAL SERVICE.

Robinson v. *Davison*, Ex., 19 W. R. 1036, L. R. 6 Ex. 269.

A question which has been for some time floating in the air is here set at rest. By a contract between the plaintiff and defendant the defendant's wife was to play the piano at a concert conducted by the plaintiff. Illness prevented her from fulfilling the engagement, and the plaintiff sued for breach of contract. The Court held that he could not recover, and as in this case it appeared that the contract could not have been fulfilled without serious consequences to the performer's health, the case was one in which the plaintiff can scarcely have expected to

recover after the decision in *Boast* v. *Firth* (17 W. R. 29, L. R. 4 C. P. 1). If the actual impossibility of performance owing to ill-health is sufficient to excuse, it would be a strange system of law which held that the promiser was bound to perform, though the performance would probably be fatal to him. But the judgments in the case went farther, and laid down that if owing to ill-health the contract could not be performed according to the intention of the parties—that is, if the performer could not perform in his accustomed style and with such excellence as would usually be expected of him—he was excused from performance. Taken with a reasonable limitation this is certainly in accordance with good sense and common understanding; and Baron Bramwell, with his accustomed thoroughness of reasoning, puts the matter on its true footing when he asks whether the performer, not being in a condition to perform well, would have any right to insist on performing at all. Both parties in such a case are equally off their bargain.

A further question arose in the case as to whether due notice was given of the incapacity. But as the damages which the jury assessed as caused by want of timely notice were inconsiderable, the point was not discussed, and all the judges expressly refrain from giving any opinion as to whether the learned judge who tried the cause was right in his direction to the jury upon that point. It is to be observed that the interval for giving notice was very short in this case; that notice was given, and that the only question was whether it ought not to have been given by telegram instead of by letter. It could not be reasonably contended that a person, who was well aware of an incapacity which there was no chance of removing in time for performance, would be justified in allowing the person with whom he had contracted to go on, unwarned, in expectation of a due performance; and with respect to the duty of employing the telegraph, the case *Proudfoot* v. *Montefiore* (L. R. 2 Q. B. 571) seems to show that, this being now a well-known and common method of communication, it ought to be used by all persons under a duty to communicate, when from the shortness of the interval its use may materially affect the interests of the person entitled to receive notice.

We cannot leave this case without remarking that it sets in a strong light the injustice and absurdity of the decision in *Hall* v. *Wright* (E. B. & E. 746). If there is any contractual relation which in all its aspects but one essentially rests upon personal considerations, and involves personal performance, it is that of marriage; yet by the majority of the judges, out of deference to that one consideration all other considerations were set aside, and the result was to treat the contract on the footing of a purely mercantile bargain. That case can only be regarded as an unfortunate accident in the law, creating a blot which the powerful reasoning of the minority will, we hope, ultimately succeed in removing.

REVIEWS.

The Medical Jurisprudence of Insanity. By G. H. Balfour Browne, of the Middle Temple, Barrister-at-Law. London: Churchills. 1871.

This is a scientific book on the subject of insanity and its legal relations, considered in the widest sense. The book differs very much from the ordinary legal text-books, indeed, as the publisher's name denotes, it is not a legal text-book at all; it is an original investigation of the subject, aimed as much at ascertaining what the law should be as at expounding what it is. Many of the medical profession, and some of our medical contemporaries, have very frequently expressed great dissatisfaction with the attitude of the law towards cases of doubtful insanity, especially upon questions of criminal responsibility. For the most part the objections thus taken to the attitude of the law towards culprits of alleged insanity have appeared to us to be grounded in a mistaken view of the deterrent objects of punishment. Mr. Browne proposes the following as a definition of conditions of legal responsibility:—"A knowledge that certain acts are permitted by law and that certain acts are contrary to law, and, combined with this knowledge, the power to appreciate and be moved by the ordinary motives which influence the actions of mankind." An American judge lately adopted the following as a test question:—"Has the defendant power to distinguish right from wrong, and power to adhere to the right and avoid the wrong?" We gather from Mr. Browne's book that he does not agree with those medical men who argue that no act should be punishable which is the offspring of mental disease. But this is a topic which we have discussed on previous occasions, and we must not allow it to divert us from our present object, which is merely to indicate to the reader the nature and quality of the work before us. It is written in a style of considerable diffuseness; we might say that the author seems vague sometimes; and yet his book abounds with a certain vigorous terseness and felicity of expression. It embodies a very great amount of information about all the various sorts and conditions of mental and moral infirmity, their characteristics and differences. Thus a very great part of the work is matter which comes within the province of medical men rather than of lawyers, but this very attribute may render the book extremely useful to a lawyer desirous of obtaining some "expert" knowledge of the almost countless ramifications and classificatious of the subject. It may also be very useful to the practitioner in another way, viz., as comprising within its pages references not only to the principal modern and other *causes celebres* which may be consulted as precedents, but to the principal judical decisions and expositions of the subject, such, for instance, as those in the *M'Naghten case* (10 Cl. & F. 200), as well as to authorities, such as Mittermaier, Georget, and very many others of both juristic and medical repute. The author writes with a good grasp of his subject, and has supplemented his work with a table of decided cases and a remarkably good index.

COURTS.

THE ALBERT LIFE ASSURANCE ARBITRATION.*

(Before Lord Cairns.)

June 24.—*Re The Medical, Invalid, and General Life Assurance Society. Re The Medical Trust Fund.*

Insurance company—Winding up—Amalgamation of companies—Trust fund.

On the amalgamation of the M. Insurance Company with the A. Insurance Company, a certain portion of the M. Company's funds, called the "Life Assurance Fund," was assigned to six trustees upon trust *in the first place to pay and satisfy all immediate claims and demands to which the M. Company was liable before the 21st of September,* 1860, *and which then remained unpaid; and secondly to pay and satisfy the costs which the trustees might incur in the execution of the trusts; and, thirdly, to raise and pay all such sums as might be required to pay and satisfy every claim or demand on any policy of the M. Company, or any other liability or obligation of the M. Company which the A. Company should not pay or satisfy, and all costs, charges, and expenses which the M. Company or any shareholder might incur by reason of any breach or non-performance of the A. Company's covenant to pay all claims and demands against the M. Company, and subject to these trusts, on the expiration of ten years from the 21st September,* 1860, *and whether any of these liabilities, obligations, or engagements of the M. Company were then subsisting or not, the trustees were to hold the fund upon trust for the A. Company. In* 1869 *both the companies were ordered to be wound up, and in October,* 1869, *a suit was instituted for the administration of the trust fund. The A. Company claimed the whole of the fund, but it was*

Held, that on the winding up of the two companies all the claims and demands on them became immediately matured; that on the institution of the administration suit, the time from the 21st September, 1860, *stopped running, and the trusts were to be executed as at the time of the commencement of the suit; and consequently that all claims on the M. Company which had not been satisfied by the A. Company must be satisfied out of this trust fund.*

Moreover, the costs of the winding up, being costs incurred

* Reported by Richard Marrack, Esq., Barrister-at-Law.

by reason of the breach or non-performance of the A. Company's covenant, must also be paid pari passu *out of the trust fund.*

This was a question as to the construction of a deed. The Medical, Invalid, &c., Society was an insurance company whose deed of settlement contained the following provisions:—

Clause 105. The produce of premiums and profits arising from and to be received upon or in respect of policies of assurance upon lives and survivorships to be granted by the company, or in respect of endowments, and the improvements and accumulations thereof, and also the produce of premiums and profits arising from and to be received from the sale of annuities and other provisions to be made or granted by the company, and the improvement and accumulation thereon, shall be denominated "The Life Assurance Fund."

Clause 106. The costs and expenses of the outfit, establishment and management of the business of the company shall be paid out of the said fund denominated "The Life Assurance Fund." . . .

On the 21st of September, 1860, an agreement for amalgamation was entered into between the Medical Invalid Society and the Albert. By a deed dated the 14th of March, 1861, this agreement was carried into effect, and the "Life Assurance Fund" was assigned to trustees upon certain trusts. [For this deed and the other circumstances connected with the amalgamation *vide Wyatt's case, supra* p. 816.]

The Albert now claimed the whole of this trust fund under the deed of the 14th of March, 1861, while the Medical Invalid Society claimed that it was primarily subject to the payment of the costs of the winding up, and of any claim or demand in respect of any policy issued by them or any other claim or obligation of theirs which the Albert had not paid or satisfied.

Osborne Morgan, Q.C., and *Lemon*, for the Medical Invalid Society.—All the claims under the first trust have been discharged, and nothing turns upon that portion of the deed. As to the second and third trusts they are quite clear. The contract between the two companies was in effect that all the burthens of the Medical Invalid were to be transferred to the Albert. For the purpose of carrying out that contract and protecting the Medical Invalid against any breach of it, the life assurance fund is set apart for the purpose of answering the consequences arising from any breach of it. Consequently, before the Albert can touch this trust fund, they must satisfy their covenant. If there is any breach of covenant, then we at once come upon the fund for an indemnity. If the Albert had continued to discharge its obligations, and to pay the policies and annuities and other liabilities of the Medical Invalid, there would have been no breach of covenant. But inasmuch as they no longer do so, and some of the Medical Invalid policyholders, &c., are making claims against us, we are entitled to indemnify ourselves out of the trust fund. From *Re The Medical Invalid and General Life Assurance Society, The Sovereign Life Assurance Company's case, supra* p. 816, it is clear that a claim cannot be made against the fund in respect of *all* policies issued by the Medical Invalid, but only in respect of those policies as to which the holders have not novated with the Albert. As to these the terms of the trust deed expressly provide for their payment out of this fund. With regard to the costs of the winding up of the Medical Invalid, they are incurred in consequence of the breach of contract by the Albert, and therefore under the trust deed are chargeable on this fund. Moreover, there is the peculiarity that this is our fund. By the 106th clause of the Medical Invalid's deed of settlement the Life Assurance Fund was subject to all costs, and consequently is still subject to the costs of the winding up.

Fischer, for the Albert Company.—By the deed of the 14th of March, 1861, the Albert bought the business of the Medical Invalid Society, and also the English Life Assurance Fund. The question is whether, having then transferred this fund, the Medical Invalid can now claim it back again. The deed must not be construed by the light of any subsequent events, which were not foreseen or contemplated at the time of execution: it must be taken as it stands. The terms of the deed are that the fund shall belong to the Albert absolutely on the expiration of ten years. The ten years expired on the 21st of September, 1870, and consequently no claim to the fund can now, in June, 1871, be urged. There are some policies which matured before the expiration of the ten years, but for all policies which were not then matured and some of which are still subsisting, the fund is in no way liable.

Barber, and *C. Walford* appeared for different sections of Medical Invalid policyholders, but were held to have no *locus standi*.

Freeman appeared for the trustees of the fund.

Lord CAIRNS.—I do not entertain any doubt on this point—that this is a fund which must be administered according to the trusts, which are declared in this deed of the 14th of March, 1861.

Those trusts are in the first place to pay and satisfy the immediate claims of the Medical Invalid at the time of amalgamation. It is conceded that those have been paid and satisfied, and are out of the question. Therefore no part of the trust fund will be required to make that payment.

The second trust is to pay and satisfy the costs of these presents, that is of the trust deed, and all such costs, charges, and expenses as the trustees or trustee may from time to time pay or incur in the execution of the trusts of the deed or otherwise. It has not been disputed that under that trust the trustees will have a right to be paid their proper costs of administering the trust, and that, therefore, in the events that have happened, the first trust being out of the question, that trust to pay the trustees' costs becomes the first charge on the fund.

It is on the trust which was originally the third, now the second, that the whole question arises, "thereout to raise and pay all and every such sums or sum of money as may be required to pay and satisfy every (if any) claim or demand on account of any policy issued by the Medical Invalid Society, or any other liability or obligation of such last mentioned company, which the Albert and Medical Life Assurance Company shall not pay and satisfy, and all costs, charges, or expenses which the said parties hereto of the second or third parts, or any shareholder in or officer of the said dissolved company may incur or become liable to by reason of any breach or non-performance of the covenant by the said parties hereto of the first part hereinafter contained."

Now, stopping there, I have already decided in *The Sovereign Life Assurance Company's case*, 15 S. J. 816, that a policyholder whose claim against the Medical had ceased by transfer to the Albert; a policyholder therefore who ceased to have a claim against the Medical, and had become a claimant against the Albert, had no right to the benefit of this trust, because his claim was one which by that operation had been satisfied by the Albert taking the insurance in place of the Medical. That question, therefore, may be put out of the case.

Now in that trust, so far as I have read it, it appears to me there could be no doubt if it stopped there, that the Medical would have a right to say:—"If there be any claims or demands which can be made against us or have been made against us on account of a policy or an annuity or any other liability or obligation which was chargeable at the time of the amalgamation against us, if there be any claim or demand made on any of those accounts against us now, that claim or demand which ought to have been satisfied by the Albert, and was not, must be satisfied out of this trust fund." But it is contended that the words which come afterwards have put an end to that right on the part of the Medical. The subsequent words are these:—"And subject and without prejudice to the trusts aforesaid, will and shall at the expiration of the term of ten years from the 21st day of September, 1860, and whether any of the aforesaid liabilities, obligations, or engagements of the said Medical Invalid Society shall be then subsisting or not, hold the said trust premises and all accumulations thereof, or so much thereof respectively as shall not have been applied or disposed of under the preceding trusts, or under the proviso next hereinafter contained, upon trust for the said Albert and Medical Life Assurance Company, and to assign and transfer the same, as the same company shall direct."

Now, if the 21st September, 1870, had arrived, and had found the Albert Company continuing business, and meeting its engagements as they fell due, and had found a certain number of liabilities of the Medical, which might afterwards, in the course of time, come to maturity, and become claims against the Medical, and had found that the Albert had made no provision by way of satisfaction to meet those possible future claims, it appears to me that under the prior terms of this trust upon that day, the 21st September, 1870, although there might be those outstanding liabilities, the

Albert would have had a right to come to the trustees of the fund and require it to be handed over to them; the time had arrived at which that operation was to be performed, and the circumstance of there being still outstanding liabilities, which afterwards might mature against the Medical would not have been any reason, looking at the express words of the trust, for keeping the fund any longer in the hands of the trustees. But what happened was different. What happened was this:—In the year 1869 the Albert first stopped payment, and was made the subject of a winding-up order, then in November of that year the Medical Society was also made the subject of a winding up order; and the effect of those two winding up orders was, that all claims and demands current against the companies were, if I may use the expression, immediately matured, and became claims which, in some shape or other, might all be proved against one or other of the two companies. They were ripened and came into immediate existence, and were no longer future reversionary claims, as to which you would have had to wait for the progress of time to see what demand was made in respect of them.

Then, to complete the narrative, between the dates of those two windings up, a bill is filed in the Court of Chancery, in the suit of *Foot* v. *Hopkinson*, to administer the trust fund according to what, at that time, were the rights of the parties. The jurisdiction of the Court was invoked; the trusts were to be executed, as it was proper in that state of things to execute them. Whether those trusts, through the operation of the Court, were executed within the following years before September 21st, 1870, arrived or not, is immaterial. The time stopped running, as soon as those events had taken place, and the fund must now be administered, as it ought to have been at the time when the bill was filed. The claims and demands having all matured in this way, and become proveable against the Medical, the simple question is, are they claims and demands which the Albert ought to have satisfied? I think clearly they are. Those were the very things, the subject of the covenant of the Albert, and not having been satisfied by the Albert, and having become within the ten years claims and demands against the Medical, and the Court within the ten years having the duty of applying the fund, as it then ought to have been applied, the fund must be applied in satisfying those claims and demands.

Then with respect to the costs of the winding-up, I have had a little difficulty about that, but it appears to me that the case is different from the case that was argued here lately as to indemnity. Here there is a fund *in medio*, and the Medical are *cestuis que trustent* of that fund, and are entitled to have out of it all costs, charges, or expenses which the company, or any shareholder or officer of the company, may, in fact, incur, by reason of any breach or non-performance of the covenant by the Albert Company. They are entitled as *cestuis que trustent* to be reimbursed the costs, which they may, in fact, incur, because the Albert has not performed its covenant. The Medical is being wound up. The shareholders will be liable to bear the costs of that winding up. It appears to me that those costs, which they are thus liable to bear, are costs which they have incurred or become liable to by reason of the breach or non-performance of the covenant of the Albert, and that under the express words of this trust they will be entitled out of this trust fund to be paid the costs of the winding up. Looking at what the amount of the claims are, it may only be a question of dividend, but they will be entitled to prove against the fund for those costs.

Fischer.—All the legal estate is vested in the trustees. A receiver was appointed in the suit, and was continued in the winding up. Would it not be desirable that he should be discharged on passing his accounts and paying in the balance?

Lord CAIRNS.—I think the receiver ought to pass his accounts, pay in his balance, and be discharged; and I think the most convenient course will be that the fund should be realised under the trustees.

Osborne Morgan.—Your Lordship treats this as the right of the *cestuis que trustent* to costs, charges, and expenses out of their own fund. Are they not entitled in the first instance, before the claims of the policyholders are paid?

Lord CAIRNS.—Most decidedly not. The right is simply a right *pari passu* with the policyholders.

Solicitors, *Lewis, Munns & Longden; Walker, Kendall & Walker; Bischoff, Bompas & Bischoff; A. Beddall.*

COURT OF BANKRUPTCY.

(Before Mr. Registrar SPRING RICE.)

September 14.—*In re Edmund Emanuel Paul.*

In this case a petition for liquidation had been presented by the debtor, who was described as carrying on the business of a hosier, glover, and general outfitter, of 5, Moorgate-street. The statement of accounts showed unsecured debts, £2,600; secured ditto, £600; against stock in trade and other assets to the amount of £2,000.

Brough applied to the Court to appoint Mr. Collison, of the firm of Ladbury, Collison, & Viney, accountants, receiver, and also for an injunction restraining a creditor who had issued a debtor's summons from proceeding further with it until after the first meeting, which had been fixed for the 3rd October.

His HONOUR thought it was unusual to grant an application to restrain a debtor's summons, and pointed out that it might have the effect of prejudicing the creditor in respect to priority, especially in this case, where the application for the debtor's summons had been made before the filing of the petition for liquidation.

Brough called his Honour's attention to the case of *Re Burnett*, 14 S. J. 357, in which the learned Chief Judge had granted an application to restrain a debtor's summons, and stated that where a petition in liquidation had been presented and a meeting fixed, it was expedient in practice that all other proceedings should be restrained.

His HONOUR, after consulting Mr. Registrar Murray, decided that in order to prevent the necessity for a renewed application, an order might issue restraining the creditor from going beyond filing a petition. Mr. Registrar Murray quite recognised the force of the argument that a creditor ought not to be prejudiced and deprived of the advantages arising from his diligence. The application for the appointment of Mr. Collison as receiver was granted on the production of the usual affidavit.

COUNTY COURTS.

LAMBETH.

(Before J. PITT TAYLOR, Esq., Judge.)

Sept. 19.—*Tullett* v. *Hunt.*

Action of ejectment under County Courts Act, 1867, *s.* 11, *relates only to cases where relationship of landlord and tenant does not exist between plaintiff and defendant, and cannot be substituted for or made to supersede powers under previous Act* (19 & 20 *Vict. c.* 108, *County Courts Act*, 1856).

This was an action to recover possession of a piece of land held by the defendant without any rent being reserved, the plaintiff having simply told defendant that he could have the use of the land until he (plaintiff) wanted it. Defendant had refused to give up possession, and as there had been no regular letting the plaintiff thought no tenancy had been created. The action was therefore brought under the County Courts Act, 1867 (s. 11), which gives jurisdiction in *all* actions of ejectment where neither rent nor value exceed £20 per annum. The annual value was alleged to be about £5.

Mr. PITT TAYLOR said the action had been brought under the recent Act, when it ought to have been brought under the older Act. The Act of 1867 did not supersede or override, but only supplemented the Act of 1856, in giving jurisdiction where title comes in question. There was no question of title here as the plaintiff had authorised defendant to occupy, and that with the occupation which followed constituted a tenancy at will. Plaintiff had only to demand possession to terminate the tenancy, and he could then proceed under the old Act. He had been thinking whether he could amend the summons, but he could not do that without so materially altering it as to make it a new one. This summons had to be served thirty-five days before hearing, and the fees on issuing amounted to £2 2s., the hearing fee to £2 more, and attorney's costs were added, amounting to three or four pounds. He could not think of mulcting the defendant in such an amount of costs, when the ordinary proceeding would cost probably less than a pound. The only thing he could do was to strike the cause out as having been commenced in error, and allow the costs of defendant's attorney.

Mr. Ody for the plaintiff.

Mr. Hubert Wood for the defendant.

APPOINTMENTS.

Mr. RICHARD BRICE, solicitor, of Burnham, near Bridgwater, in the county of Somerset, has been appointed Clerk to the Burnham Local Board of Health, in the room of Mr. B. T. Allen, solicitor. Mr. Brice was admitted an attorney in 1862.

COLONIAL TRIBUNALS & JURISPRUDENCE.

AUSTRALIA.

MELBOURNE.

(Sittings in Banco. Trinity Term. Before their Honours Sir W. F. STAWELL, C.J., Mr. Justice BARRY, and Mr. Justice WILLIAMS.)

June 21.—*Chandler* v. *Melbourne and Hobson's Bay Railway Company.*

Negligence—Common employer—Defective machinery.

Rule *nisi* to enter a verdict for defendants.

The *Attorney-General*, with *Ireland*, Q.C., and *Higinbotham*, moved the rule absolute.

Billing and *M'Farland* showed cause.

The action was brought by John Chandler, a shipwright, to recover damages for injuries sustained in a collision on the company's line. Defendants pleaded—1. Not guilty. 2. That plaintiff was not a passenger. 3. That at the time of the accident plaintiff was in the employ of the company, and that the injuries he received were the result of the negligence of some of his fellow-servants, for which the defendants were not responsible. On the 25th April, 1870, the plaintiff was employed repairing a platform at the Brighton Beach Station. He left off work about five o'clock in the afternoon, and returned to town by a train leaving at five minutes past five. He travelled in a second class carriage, under a free pass given to him by the company as one of their servants. At Melbourne he got into another train for Sandridge. The train should have left for Sandridge at twelve minutes to six, but did not leave till five minutes to six. The engine, however, had not been in working order; it was blowing at both pistons, which prevented good time being kept. Another engine, known as the "Hawthorn," was then exchanged for the other. It also was blowing at one piston. Although it was then near dusk no tail-lamp was attached to the last carriage, as required by the company's regulations. At the North Sandridge Station the train stopped for a few minutes to disembark passengers. It had just commenced to move again when another engine (1,803), despatched from Melbourne at two minutes to six, came up behind it, ran into the last carriage, and caused the shock by which the plaintiff was seriously injured. The evidence also went to show that the North Sandridge station was in darkness—no light on the gates; that as the engine "Hawthorn" started, one of the wheels "skidded"—that was, revolved without having a grip on the rail, and thus the progress was retarded. The driver of engine 1,803 said that if the tail-lamp had been attached to the train he could have stopped his engine long before the accident occurred. The jury gave a verdict for plaintiff, damages £1,000, leave being reserved to enter a verdict for defendants on the ground that the accident was caused by the negligence of plaintiff's fellow-servants.

Billing and *M'Farland* submitted that it was the duty of the company to provide not only competent servants but sufficient machinery and rolling stock. The evidence here proved distinctly that the rolling stock was defective, and was the cause of the accident. Had the engines been in such order as to keep good time the train would have started earlier, and the accident might not have occurred. Then if the engine had not "skidded" the train would have been moving faster at the time of the collision, the force of the shock would have been lightened, and the plaintiff might never have been injured. As to an employer not being liable for the acts of a fellow-servant, the law was plain that he must employ competent men, and there was evidence adduced here that the men were incompetent. Nor could this man be said to be in the same employment with those who caused the accident. He was engaged in altogether a different capacity: *Manser* v. *The Eastern Counties Railway Company*, 3 L. T. N. S. 585; *Wilson* v. *Merry*, 1 Scotch App. 327; *Barton's-hill Company* v. *Maguire*, 3 Macq. H. L. C. 300; *Morgan* v. *The Vale of Neath Company*, 5 B. & S. 570, 723; *Ford* v. *The London and South Western Railway Company*, 2 F. & F. 730; *Stokes* v. *The Eastern Counties Railway Company*, *ib.* 691.

The *Attorney-General* urged that the accident was caused wholly by the fact of the tail-lamp not being placed on the last carriage. If the light had been placed the driver of the engine 1,803 could have seen it, and would have pulled up in time. That the lamp was not placed was clearly the negligence of one of the officers, and was not the fault of the company.

Mr. Justice WILLIAMS.—But should there not be some one to see that the guard does his duty? Ought there not to be a superior officer to see that the rules are obeyed?

The *Attorney-General*.—The supervising process must end somewhere. The company could not go on appointing one officer to look after another. The stationmaster's duty was to see that the trains were dispatched properly.

Mr. Justice WILLIAMS.—Is not the company responsible for that?

The *Attorney-General*.—He would only be a fellow-servant with the plaintiff. To constitute fellow-servants it was only necessary that there should be a common occupation, not an immediate common object in which both were engaged. As to the not lighting of the gates and the alleged defective machinery, they clearly had nothing to do with the accident: *Tunney* v. *The Midland Railway Company*, L. R. 1 C. P. 291.

The case was argued in Easter Term, and judgment was now given.

The CHIEF JUSTICE read the following judgment:—Rule *nisi* to enter a verdict for the defendants, or nonsuit, on the ground that the injury complained of was caused by the negligence of a fellow-servant engaged in one common employment, the Court having the same power as a jury to draw inferences of fact. The plaintiff was employed as a shipwright by the defendant company, and was conveyed daily by their trains between his place of work, Brighton, and his place of residence, Sandridge. On the evening of the day on which he received the injuries complained of he was being conveyed home as usual, and on his way arrived at Melbourne, where he was obliged to change carriages, leaving the Brighton and Melbourne train and getting into a carriage of the Melbourne and Sandridge train. An engine (1,803), which up to this time had been attached to the latter train, was in a defective condition, unable to attain the proper speed, and the trains to and from Sandridge and Melbourne in the afternoon were consequently late. Another engine (Hawthorn) was employed at the Melbourne station, and, according to the usual practice, would at the end of the day's work have been sent to Sandridge for the night. This engine was also in a defective condition; the tyres of the wheels being out of repair. Its speed, however, was not materially affected. After the plaintiff's arrival in Melbourne, it was substituted for 1,803, which was to be taken to Sandridge and repaired. The drivers and firemen of each engine were also changed. These arrangements having been made, the train started at about dark for Sandridge, with engine Hawthorn, several minutes late, and without a tail lamp. Engine 1,803 followed soon after. The train stopped at North Sandridge to let out a passenger. The guard hearing, it was said, the whistle of engine 1,803, directed the driver to start. He did so, and the train had begun to move, the wheels of the engine revolving, but not advancing so rapidly as they ought to have done—"skidding" as it is termed—in consequence of the defective state of the tyres, when just at this moment engine 1,803 ran into the train—the driver not seeing it—and caused the concussion by which the plaintiff was injured. The circumstances of the case, so far as they relate to the plaintiff's being in the employment of the company whilst he was conveyed to and from his work, so closely resemble those in *Tunney* v. *The Midland Railway Company* (L. R. 1 C. P. 291) as to make that case, as regards the plaintiff's being in the defendants' employment, an authority which governs the present, the question for our consideration being whether there was any evidence of negligence on the part of the company, apart from or in addition to that of their servants, which caused, or materially aggravated, the accident. As to the cause of the accident, the plaintiff relied on the condition of engine 1,803, the consequent lateness of the trains between Melbourne and Sandridge that afternoon, the detention of the train when it started with engine Hawthorn; contended that as the departure of that train was uncertain so also was that of engine 1,803, and thus a sufficient interval had not been in-

sured between the starting of each; and as regards the aggravation, he urged also the condition of the engine Hawthorn, the "skidding" of the wheels resulting from such a condition, and the increased violence of the shock caused by this delay in moving forward, a violence which, had the train been in motion, might have been very considerably lessened. There may be little doubt, according to the evidence, that if the train had been furnished with a suitable lamp, placed so as to have been visible to those on the engine as it approached, the engine itself might have been stopped and the collision avoided. The omission to place this lamp on the last carriage of the train has, without question, been attributed to the default of the fellow servants of the plaintiff. Fully conceding that the collision might have been avoided if this lamp had been in its place, it does not, however, necessarily follow that the defendants are exculpated from all negligence. The company were bound to make arrangements for the regular and punctual departure of trains, and also for proper intervals between each, so that all might, with reasonable certainty, arrive safely at their destination. What those arrangements should be it is not for us to prescribe; we cannot but think, however, that this safety ought not to be dependent on one train being or not being distinctly visible to the other. There is no evidence as to the rate of speed at which the engine ought to have passed the North Sandridge station, but taking it for granted that an interval of three minutes is sufficient to guard against all probable contingencies, it does not appear precisely when either the train or the engine left Melbourne. Two witnesses fix the departure of the train at 5.55, or seven minutes late; one at 5.52, or four minutes late; and one at 5.51, or three minutes late. Had the train started punctually it might have been comparatively easy to ascertain whether the engine did so also at three, or not less than three minutes after; but the evidence as regards the engine is merely that it was at the gates, a short distance from the North Sandridge station, at 5.57; the train, according to the same witness, having then been four minutes from Melbourne, or, in other words, having started at 5.53. If the engine left at 5,56, or three minutes after, it seems highly improbable it could have reached these gates in one minute. All this evidence tends to show great uncertainty as to the time of departure of both train and engine—an uncertainty which becomes of much more importance in consequence of the short distance between Melbourne and Sandridge, and of the shorter still between Melbourne and North Sandridge, three minutes only being the time between the two latter, and five minutes between the two former; thus allowing scarcely any means for one train escaping from another following too rapidly on it. But assuming directions to have been given, and arrangements made, and non-compliance with them to be, as regards fellow-servants, the negligence of the employed and not of the employer, still the employer is bound not merely to make proper arrangements and provide competent servants to carry them out, but also to furnish those servants with adequate machinery and resources for their work. Unless he has done all these he cannot be held to have adopted the proper measures to ensure the safety of the passengers. It was said in the case of *Tarrant* v. *Webb* (4 W. R. 640) that negligence cannot exist if the master does his best to employ competent persons; he cannot guarantee them. But how can he be held free from negligence when he permits both these engines to be in the condition described by the evidence? Their condition caused the trains to be late; that lateness, and the change of engines consequent also upon their condition, conduced to the uncertainty of departure; and had not the engine followed too rapidly on the train the collision could not have taken place. There must either have been insufficient arrangements, or those arrangements were not properly carried out, in consequence in some degree of the inadequacy of the machinery supplied. We do not say this inadequacy was *causa causans* the collision, but we think it formed an element so far contributory to it as to afford some evidence to go to the jury of negligence on the part of the defendants. The competency of the servants, we may observe, though alluded to at the trial, was not questioned during the argument of the rule. It may, therefore, we take it, be assumed. The other question remains of whether material aggravation of the injury afforded evidence of actionable negligence against the defendants. The plaintiff relied on the case of *Stokes and Another* v. *Eastern Counties Railway Company*, 2 F. & F. 691. The finding of the jury rendered it unnecessary to question the correctness of the charge of the Lord Chief Justice in that case. It cannot, therefore, be regarded as a conclusive authority; but it is evident from the questions submitted to the jury that the very learned judge supposed that a material aggravation caused by the absence or omission to use break-power, though it might not have prevented, yet may have so contributed to the injury as to have rendered the defendants in that case liable. The present defendants urge that as the accident would have occurred whatever the condition of the engine Hawthorn might have been, the aggravation of the injury affords no grounds on which the plaintiff can retain his verdict; but if this contention is correct the accident might have been attended with little or no injury had the train moved on, and yet the defendants, whose admitted negligence may have been the cause of the serious damage to the plaintiff, are not to be answerable. If the present action had been brought against the fellow-servant proved to have omitted to place the lamp, or the driver of engine 1,803 shown to have started too soon, the plaintiff might possibly be entitled to a verdict, but he would not recover damages as against his fellow-servant for injuries which he himself might have avoided, or which were caused by the insufficiency of the machinery furnished by their common master; and had it been shown, either that the train did not endeavour to get out of the way of the approaching engine, or was unable to do so in consequence of the defective state of the engine by which it was drawn, the defendant in the action would not be answerable for the enhanced injuries fairly attributable to this omission or inability. As, then, the plaintiff could not recover damages for them from the employed, he would be without redress unless he could do so from the employer. The case may be without precedent, but even in the absence of the authority cited we are disposed to think that the material aggravation in this case caused by the "skidding" of the wheels also afforded some evidence of negligence. No question arises as to the mode by which the jury ought to assess their damages in such a case. We are of opinion that on one or other, if not both grounds, the evidence could not have been withdrawn from the jury. The rule will be discharged.

Rule discharged.—Australian Jurist.

AMENDED SCALE OF COUNTY COURT COSTS IN AUSTRALIA.

There is no question of such mutual interest to the public and the legal professions as that of costs. A learned judge recently took occasion to remark, that in any legal process, he considered that, having regard to their importance, the issues might be arranged in the following order: "First, the practice; second, the costs; and third, merits." This dictum, which has run the round of the press, must of course be taken for what it is, a mere *jeu de mots*; but it contains a sufficient modicum of truth to prevent our forgetting it, together with the laugh it excites. It is not many months since we had to pass in review and to condemn a scale of costs which fixed the amount of fees to be paid in the county courts, and that our condemnatory remarks were justified is now shown by the publication of an "amended scale of costs and fees, &c."

To those conversant with the difficulty of making one fixed scale fit a variety of circumstances, there is nothing strange in the fact that a trial scale hurriedly prepared should have proved a failure. But we must confess that it is somewhat to be wondered at that an "amended scale," prepared with all the advantage of a complete knowledge of former errors, should itself be, if possible, more unworkable than the scale which it purports to amend. In our last number this latest sample of official blundering will be found, and its introduction shows that it is vouched for by no less than three county court judges, and submitted to and approved of by the Solicitor-General. From the fact of their names appearing, we are justified in assuming that one and all of these gentlemen hold themselves responsible for the workable nature of their joint production. From the acknowledged ability and lengthened experience of some of these gentlemen, we might almost go a step further, and declare that the public would be justified in accepting their handiwork without scruple or caution. This seems to have been the case, judging from the fact that, although this scale has been in force since June 1st no complaints have as yet been made public in the journals.

It is vastly more pleasant to praise than to blame, and we sincerely wish that it was our task in this instance to criti-

cise a careful and complete piece of drafting, instead of blaming what we believe to be a hastily compiled list of fees, apportioned without any reference to the value of the services to be rendered for them. The more we look into and examine this scale, the greater is our astonishment that gentlemen of such long and large experience as their Honours Judge Pohlman and Judge Cope should have compiled it, or at least certified it to be correct. As far as we can understand its provisions, which, with regard to certain items, are puzzlingly ambiguous, we have been at the pains to compile a table which shows, at a glance, the fees payable under the original scale, which is admitted to be bad, and under the "amended scale," which is vouched for as good, by gentlemen otherwise entitled to our respect.

COMMON LAW JURISDICTION.

OLD SCALE.	£ s. d.	AMENDED SCALE.	£ s. d.
Over £10 and under £20.		*Over £10 and under £20.*	
Attorney alone.....	1 5 0	Attorney alone.....	2 17 0
Under £50.		*Under £50.*	
Attorney alone.....	2 10 0	Attorney alone.....	4 4 6
Attorney and Counsel.....	5 14 6	Attorney and Counsel.....	6 19 0
Over £50 and under £150.		*Over £50 and under £100.*	
Attorney alone.....	5 0 0	Attorney alone.....	7 15 6
Attorney and Counsel.....	10 19 0	Attorney and Counsel.....	10 11 0
Over £150.		*Over £100.*	
Attorney alone.....	7 10 0	Attorney alone.....	9 15 6
Attorney and Counsel.....	15 14 0	Attorney and Counsel.....	14 15 0

EQUITY JURISDICTION.

Under £100.		*Under £100.*	
Attorney alone.....	5 10 0	Attorney alone.....	10 3 0
Attorney and Counsel.....	11 19 0	Attorney and Counsel.....	16 12 0
Over £100.		*Over £100.*	
Attorney alone.....	8 10 0	Attorney alone.....	14 18 0
Attorney and Counsel.....	17 4 6	Attorney and Counsel.....	24 11 6

PROBATE AND ADMINISTRATION.

		Under £50.	
Attorney alone.....	2 10 0	Attorney alone.....	3 3 0
		Under £100.	
		Attorney alone.....	5 5 0
		Between £100 and £300.	
		Attorney alone.....	7 7 0

These contrasted amounts have been approximately calculated, allowing for one witness in each case, and also subject to a doubtful charge under the amended scale, which is that for "preparing brief notes of case and evidence for use at trial." We have allowed for this in calculating the amount of costs payable where a case is conducted by attorney alone, conceiving that a brief is as necessary to an attorney as a barrister when acting as an advocate in court. In this view we are borne out by a subsequent item, which says, "in addition, counsel's fee where a barrister-at-law is retained by an attorney to support or oppose motion." We presume that this means in addition to the above fees chargeable in cases conducted by attorney or barrister alone. Again, we find an item, "brief for counsel," which appears from the dissimilarity between the amounts allowed for its preparation and those for "brief notes, &c.," to represent a distinct class of fees. We understand, however, that the learned judge who presides in the Melbourne County Court does not coincide with our view, and disallows any fee for "brief notes of case and evidence," unless a barrister-at-law be retained.

In the fees for obtaining probate and administration there is a marked disproportion between the old and the new scale, as under the old either could be obtained for a total charge of £2 10s., whereas now fees range from £3 3s. to £7 7s. However, as the business is intended to be transacted by solicitors, it does not affect the main question we have under consideration.

The most casual glance at the above contrasted columns will suffice to discover that under the amended scale litigation is more costly than under the original one. We do not object to the change on this ground, as it is only to be presumed that the compilers of the new scale thought that the consideration under the former one was inadequate. But on balancing the fees payable to attorneys alone, or to barristers, should they choose to conduct business without the intervention of an attorney, with the fees allowed when both attorney and counsel appear, we find that the amounts are disproportionate to the value of the services rendered. Virtually, this amended scale is an attempt to further the amalgamation of the professions by a side wind. We have already discussed this question at length, and have no desire to renew its consideration here; but be the scheme advisable or not, it is a change to be inaugurated openly and above-board, and not by such means as this.

To those who carefully check our figures with a view to a refutation of our argument, it may appear that we have omitted certain minor items which were invariably allowed under the old scale. This is so, we admit, but they would have no effect on the general statement, that under the amended scale a larger amount is payable by litigants, and that the excess goes into the pockets of the attorneys. This would not be the case in up-country districts where members of the utter bar may not unfrequently be found who are accustomed to take business direct, and, indeed, the amended scale seems to have been framed to promote the interests of these gentlemen. In conclusion, we may add that cases which support our views have already arisen, and bid fair to be of constant recurrence. Only the other day our attention was called to a case tried in the Melbourne County Court, in which a question of considerable importance had to be determined, although the amount at issue was only a few pounds. Counsel was retained, and necessarily so, but on taxation of costs, although upwards of four pounds was allowed for the services of the solicitor, counsel's fee was struck out. In the face of the new scale, several barristers practising in the county court have given it as their opinion that they must perforce hold briefs where the amount is under twenty pounds for nothing, unless they wish to see all the business of that character thrown into the hands of the lower profession. The framers of the amended scale cannot have thought it desirable that this should be the case, nor is it probable that the Solicitor-General would have ratified any such startling innovation had he been fully aware of the inevitable result of the amended scale passing into law. A fresh scale is imperatively necessary, and should be compiled with the full knowledge and assent of both branches of practitioners in the courts in which it is to be put in force, and not merely of any one of them. There is safety in such cases in a multitude of counsel, and in this question, which concerns the interests of all branches of the profession, it is only right that the opinions of all should be taken and duly considered.—*Australian Jurist.*

OBITUARY.

MR. J. P. NORMAN.

Mr. John Paxton Norman, Acting Chief Justice of the High Court of Judicature at Calcutta, has been assassinated. He was stabbed on Wednesday, in two places, by an up-country native as he was entering his court, and expired on Thursday, the 21st September, at one o'clock in the morning. One wound was in the abdomen, and the other on the left shoulder, between the spine and the bladebone. The deceased judge was the eldest son of the late John Norman, Esq., J.P., of Claverham House, Somersetshire, and a deputy lieutenant of that county, by his second wife, Sarah Elizabeth, eldest daughter of the Rev. Henry Paxton, of Baythorne, Essex. Mr. J. P. Norman was born in 1819, and succeeded to the family estate on the death of his father in 1837. He was educated at Exeter College, Oxford, where he graduated B.A. in 1841, and M.A. in 1844. For some years previous to being called to the bar he practised as a special pleader, and was called to the bar of the Inner Temple on the 17th November, 1852; he went some years on the Western Circuit, but afterwards joined the Home Circuit. He reported cases in the Court of Exchequer from Easter Term, 1856, to Hilary Vacation, 1862, his name being identified with the series of Exchequer Reports known as "Hurlstone and Norman's." In 1862, on the passing of the Indian High Court of Judicature Act, he was one of the barrister judges appointed to a seat on the bench at Calcutta, and continued to exercise his functions till his death. About six months ago, on Sir Richard Couch, the Chief Justice of Bengal, taking a short leave to Europe, Mr. Norman was appointed to

act as Chief Justice during his absence. When the last Indian mail left, Sir R. Couch was expected to return to Calcutta in October, but it was stated that he would remain in office only a few months, when it was supposed that Mr. Justice Norman would permanently succeed him. Besides the Law Reports, which bear his name, Mr. Norman was the author of a treatise on the "Law and Practice of the Copyright and Registration of Sculpture, with the Remedies, Pleadings, and Evidence, in Cases of Piracy," &c. Also a "Treatise on the Law and Practice relating to Letters Patent for Inventions, as altered and amended by statutes 15 & 16 Vict. c. 83, and 12 & 13 Vict. c. 109."

COURTS OF REVISION.

The revision of the lists of voters for the borough of Marylebone opened at the Vestry-hall, Harrow-road, on Wednesday, before Mr. F. H. Bacon, the barrister appointed for that purpose, when the revision of the lists for the parish of Paddington was proceeded with. The Conservative party were represented by Mr. R. H. B. Macmullen, honorary secretary and solicitor of the Paddington Conservative Association, and by Mr. Biddulph, who attended on behalf of the Marylebone Conservative Association. Mr. Cremer and Mr. Britten appeared for the extreme Radical party. There were 36 new claims, of which 26 Conservative and three Liberal were allowed. The Conservatives took 124 objections, and sustained 102; 12 were withdrawn and 10 disallowed. There were several cases of joint occupancy, in which the qualification of the applicants was entered on the lists as a "dwelling-house." Mr. Beddall contended that under the recent Reform Act there can be no joint occupation of a house described as a "dwelling-house." If the tenants desired to be put upon the register, they must qualify themselves under the old Act. The Revising Barrister considered the description a "dwelling-house" a very proper one. Both Acts of Parliament must be considered as one Act, and he ruled that the claims should be allowed. Mr. Beddall was sorry to differ from the Revising Barrister, and said he considered the point a most important one. As there were a great number of similar claims he must ask that a case be granted for the Court of Common Pleas. The Barrister felt reluctant to grant a case in this instance, as he considered the claims to be very straightforward, but as Mr. Beddall still pressed the question he ultimately granted a case. Four names were shut out on the ground that the parties were at present receiving or had been in the receipt of parochial relief. A point of some importance was raised by Mr. Beddall on the name of a foreigner coming before the Court—namely, that proof was required as to whether a foreigner had been naturalized or not. Mr. Beddall contended that the person who wished to become qualified as an elector should be present to answer the question. The Revising Barrister considered it to be the duty of the overseers, when the claimant was a foreigner, to ascertain who such foreigner was, and if he was naturalised or not, before they inserted his name in the list. Mr. Beddall asked for a case, and the Barrister granted one. The Court at its rising at Paddington adjourned to the court-house, Marylebone, for the revision of the lists for that parish. The same legal gentlemen attended, with the addition of Mr. Durrant Cooper, the well-known Liberal agent of the borough, who appeared in support of a large number of persons who had claims or had been objected to, under instructions from Messrs Peter Graham & Co., of Oxford-street. There were 49 new claims, but only a few were taken. The objections, of which there are upwards of 400, were chiefly taken by the Conservatives. In the Marylebone list there was a large number of claims and objections in reference to the question of joint occupancy, previously discussed at the Paddington court, and as to the foreigner naturalization questions, and cases were also granted. With regard to the objections, in consequence of the unexpected numbers, the barrister having made his arrangements for his sittings in other metropolitan boroughs, they were adjourned until October so far as the householders' lists were concerned. The Revision Court for the borough of Shrewsbury was held on Tuesday before Mr. Churchill, when an important point was raised by Mr. Chandler, the Conservative advocate, who took exception to the form in which the notices of objection had been filled up, the name of the parish in which the party resided, the qualification, and the situation of the property for which he was rated being all omitted. He quoted a decision of Mr. Justice Maule in a similar case, *Barlow* v. *Ashley*, where he held that the description was insufficient, and consequently that the notice was bad. After a reply from the Liberal advocate, the Revising Barrister said he thought the notices were informal, and that they were all consequently bad. This decision involved the loss of more than 40 votes, and the result of the revision was—Liberals expunged, 97; Conservatives expunged, 15; claims by Conservatives, 39; claims by Liberals, 17; net gain to Conservatives, 104.

PUBLIC COMPANIES.

GOVERNMENT FUNDS.

LAST QUOTATION, Sept. 22, 1871.

From the Official List of the actual business transacted.

3 per Cent. Consols, 93
Ditto for Account, Oct. 4, 93
3 per Cent. Reduced 91⅞
New 3 per Cent., 91⅛
Do. 3½ per Cent., Jan. '94
Do. 2¾ per Cent., Jan. '94
Do. 5 per Cent., Jan. '73
Annuities, Jan. '80 —
Annuities, April, '85
Do. (Red Sea T.) Aug. 1908
Ex Bills, £1000, — per Ct. 12 p m
Ditto, £500, Do — 12 p m
Ditto, £100 & £200, — 12 p m
Bank of England Stock, 4½ per Ct. (last half-year) 246
Ditto for Account.

INDIAN GOVERNMENT SECURITIES.

India Stk., 10½ p Ct. Apr. '74, 206
Ditto for Account
Ditto 5 per Cent., July, '80 113
Ditto for Account, —
Ditto 4 per Cent., Oct. '88 103½
Ditto, ditto, Certificates, —
Ditto Enfaced Ppr., 4 per Cent. 95½
Ind. Enf. Pr., 5 p C., Jan. '72 100
Ditto, 5½ per Cent., May, '79 109½
Ditto Debentures, per Cent., April, '64 —
Do. Do., 5 per Cent., Aug. '73 103
Do. Bonds, 4 per Ct., £1000 20 p m
Ditto, ditto, under £100b. 20 p m

RAILWAY STOCK.

	Railways.	Paid.	Closing prices
Stock	Bristol and Exeter	100	101
Stock	Caledonian	100	109
Stock	Glasgow and South-Western	100	117
Stock	Great Eastern Ordinary Stock	100	43½
Stock	Do., East Anglian Stock, No. 2	100	9¼
Stock	Great Northern	100	134½
Stock	Do., A Stock*	100	151
Stock	Great Southern and Western of Ireland	100	103½
Stock	Great Western—Original	100	102
Stock	Lancashire and Yorkshire	100	154½
Stock	London, Brighton, and South Coast	100	65½
Stock	London, Chatham, and Dover	100	22½
Stock	London and North-Western	100	142
Stock	London and South-Western	100	104
Stock	Manchester, Sheffield, and Lincoln	100	64½
Stock	Metropolitan	100	77½
Stock	Midland	100	134½
Stock	Do., Birmingham and Derby	100	107
Stock	North British	100	49
Stock	North London	100	121
Stock	North Staffordshire	100	72½
Stock	South Devon	100	68
Stock	South-Eastern	100	91½
Stock	Taff Vale	100	168

* A receives no dividend until 6 per cent. has been paid to B.

MONEY MARKET AND CITY INTELLIGENCE.

There has been a little tendency to dulness during the early part of the week, and on Thursday the Bank Directors raised the rate of interest from 2 per cent., at which it has been since July last, to 3 per cent. The funds were only slightly affected, but closed somewhat lower. The Railway Market was considerably influenced in an adverse direction, and prices generally underwent a substantial reduction. Bank shares, on the contrary, gained strength. There is an active demand for discount at advanced rates.

The post of senior magistrate in the Straits Settlements has become vacant by the death of Mr. Charles Owen, barrister-at-law, who expired at Penang on the 15th August, aged 35 years. Mr. Owen was called to the bar by the Hon. Society of the Inner Temple on the 16th January, 1862, and was appointed senior magistrate at Singapore, by the Duke of Buckingham and Chandos, in June, 1868. The appointment is worth 4,680 dollars per annum, and is in the gift of Lord Kimberley, Secretary of State for the Colonies.

RESIGNATION OF A COUNTY COURT JUDGE.—Mr. James Stansfeld, Judge of County Courts, Circuit No. 12 (comprising Dewsbury, Halifax, Holmfirth, and Huddersfield), has placed his resignation in the hands of the Lord Chan-

cellor. Mr. Stansfeld was born on the 22nd April, 1792, and is therefore in his eightieth year. He was originally an attorney of Halifax, and was appointed Judge of the Courts of Request for Halifax and Huddersfield in 1841, and Judge of the County Courts, in Circuit No. 12, in 1847. His only son is the Right Hon. James Stansfeld, who was called to the bar at the Inner Temple in January, 1849. It is stated that the vacant judgeship has been offered to, and accepted by, Mr. Serjeant Tindal Atkinson, Judge of the North Wales Circuit (No. 28), to which he was appointed in November last year, on the resignation of Mr. Johnes.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

STEBBING—On Sept. 20, at 13, Pembridge Villas, Bayswater, the wife of William Stebbing, Esq., barrister-at-law, of a daughter.

MARRIAGES.

CHADDOCK—HORNER—On Sept. 7, at St. John's the Divine, Brooklands, Thomas Chaddock, Esq., solicitor, Congleton, to Emilie Race, second daughter of Joseph Race Horner, Esq., solicitor, Sudbury House, Brooklands, near Manchester.

DEATHS.

MARTIN—On Sept. 18, at Battle, Mr. Edwin Martin, solicitor, aged 71.

LONDON GAZETTES.

Friendly Societies Dissolved.

FRIDAY, Sept. 15, 1871.

Friend-in-Need Friendly Society, Newfoundland-st, St Paul, Bristol Sept 12

TUESDAY, Sept. 19, 1871.

Victoria Friendly Society, George and Dragon Inn, Knighton, Radnor. Sept 14

Creditors under 22 & 23 Vict. cap. 35.

Last Day of Claim.

FRIDAY, Sept 15, 1871.

Bennett, Chas, Farnham, Surrey, Machinist. Oct 20. Hollest & Mason, Farnham

Blenkinsop, John, Newcastle-upon-Tyne, Licensed Victualler. Jan 1. Joel, Newcastle-upon-Tyne

Braithwaite, Saml, Bradford, York, Worsted Spinner. Oct 31. Terry & Robinson, Bradford

Brunt, Joseph, Macclesfield, Cheshire, Silk Waste Dealer. Nov 1. Higginbotham & Barclay, Macclesfield

Case, Ellz Ann, Olney-st, Walworth, Widow. Oct 18. Mancell, Laurence Pountney-hill

Child, Jane, Llanstadwell, Pembroke, Spinster. Nov 1. Powell & Co, Haverfordwest

Clark, Mary, Ramsgate, Kent. Spinster. Jan 1. Daniel, Ramsgate

Denton, Wm, Southampton, Carpenter. Oct 10. Sharp & Co

Edkins, Jas, Stratford-upon-Avon, Warwick, Gent. Nov 1. Hobbes & & Co, Stratford-upon-Avon

Gaukrodger, Caleb, Ovenden, Halifax, York, Weaver. Oct 30. Longbottom, Halifax

Guest, Sarah, Pennington, Lancashire, Spinster. Dec 12. Guest, Manch

Hargreaves, Edmund, Lower Darwen Lancashire, Rent Agent. Nov 11. Pickop, Blackburn

Hobgen, Thos, Mapsons, Sussex, Yeoman. Oct 15. Johnson & Raper, Chichester

Hook, John, Lpool, Builder. Oct 20. Miller & Co, Lpool

Johnstone, Rev Edwd, Hastings, Sussex. Nov 1. Smith & Co, Broad-st, Cheapside

Le Forestier, Thos, Bampton, Oxford, Gent. Oct 20. Hawkins, Oxford

Palmer, John, Chigwell, Essex, Gent. Oct 14. Jarvis, Chancery-lane

Parr, Edwd, Leicester, Draper. Dec 30. Dalton, Leicester

Price, Anne, Freemantle, Hants, Widow. Oct 20. Hawkins, Oxford

Russell, Robt, South End, Croydon, Gent. Oct 31. Russell & Co, Coleman-st

Sawyer, Robt Hy, Harefield, Middlesex, Solicitor. Nov 1. Brettell & Smythe, Staple-inn

Smith, Saml, Highurst Wood, Sussex, Husbandman. Oct 10. Sprott, Mayfield

Thatcher, Thos, Southampton, Smith. Oct 9. Sharp & Co, Southampton

Warren, Chas, Market Drayton, Salop, Esq. Oct 29. Warren

TUESDAY, Sept. 19, 1871.

Alder, Sarah, Battersea Rise, Widow. Oct 31. Corsellis, East-hill, Wandsworth

Baker, Fras, Ulster-ter, Regent's-pk, Widow. Oct 20. Warry & Co, Lincoln's-inn-fields

Dunn, Geo, Chard, Somerset, Plumber. Oct 18. Clark & Lukin, Chard

Farrar, Mary, Halifax, York, Earthenware Dealer. Oct 30. Longbottom, Halifax

Gunn, Robt Sutherland, Burton-on-Trent, Stafford, Hotel Keeper. Nov 1. Perks, Burton-on-Trent

Hecks, John, Axminster, Devon, Yeoman. Oct 18. Clarke & Lukin, Chard

Holloway, Wm Hy, Bradford, York, Wine Merchant. Oct 9. Taylor & Co, Bradford

Mew, Edwd, Mousehill, Isle of Wight. Dec 1. Mew, Newport

Middleton, Geo, Bradford, York, Manufacturer. Oct 9. Taylor & Co, Bradford

Newton, Richd, Winshill, Derby, Farmer. Oct 26. Perks, Burton-on-Trent

Ogden, Saml, Duffield, Derby, Miller. Nov 30. Moody, Derby

Rees, Geo, Brunswick-sq, Silk Mercer. Nov 2. Robson & Co, Sackville-st, Piccadilly

Rosam, Chas, Surbiton, Surrey, Carman. Oct 14. Bell & Newman, Abchurch-lane

Southworth, Mary, Warton Brows, Lancashire, Widow. Oct 20. Dickson, Kirkham

Williams, Alex, Pendleton, Lancashire, Publican. Oct 18. Hankinson, Manch

Waugh, Valentine, Lpool. Oct 26. Simpson & North, Lpool

Bankrupts.

FRIDAY, Sept. 15, 1871.

Under the Bankruptcy Act, 1869.

Creditors must forward their proofs of debts to the Registrar.

To Surrender in London.

Lorie, David Alfd, Newgate-st, Manufacturer. Pet Sept 13. Murray. Oct 10 at 12

Richards, Thos Fras, Falcon-ct, Fleet-st, Solicitor. Pet Aug 12. Pepys. Oct 6 at 12.30

Savill, Martin, Adam's-ct, Old Broad-st, Stock Broker. Pet April 19. Spring-Rice. Oct 5 at 11

To Surrender in the Country.

Bell, Thos C., Newcastle-on-Tyne, Wine Merchant. Pet Sept 13. Mortimer. Newcastle, Oct 3 at 12

Brooke, Edwd, Bradford, York, Woolstapler. Pet Sept 12. Robinson. Bradford, Sept 26 at 12

Coe, Richd J., Gt Yarmouth, Soda Water Manufacturer. Pet Sept 11. Chamberlin. Gt Yarmouth, Sept 27 at 12

Cooper, Fredk Martin, Plymouth, Devon, Accountant. Pet Sept 12. Shelly. East Stonehouse, Sept 27 at 11

Geddes, Wm Bodden, Warrington, Lancashire, Miller. Pet Sept 11. Nicholson. Warrington, Sept 28 at 12

TUESDAY, Sept. 19, 1871.

Under the Bankruptcy Act, 1869.

Creditors must forward their proofs of debts to the Registrar.

To Surrender in the Country.

Keely, Harold, Boscastle, Cornwall, Gent. Pet Sept 16. Chilcott. Truro, Oct 4 at 11

Mudd, Fredk Chas, Uckfield, Sussex, Surgeon. Pet Sept 14. Blaker. Lewes, Sept 28 at 11

Roebuck, Wm, Huddersfield, York, Yarn Spinner. Pet Sept 14. Jones, jun. Huddersfield, Oct 2 at 11

BANKRUPTCIES ANNULLED.

TUESDAY, Sept 12, 1871.

Child, Edwd Ogden, Halifax, York, Innkeeper. Sept 7

Hay, Jas Alex Cameron, Frederick-pl, Plumstead, Clerk. Sept 7

Williams, Thos, sen, Jenkin Williams, & Thos Williams, jun, Gellyrhaidd, Llantrissant, Glamorgan, Cattle Dealers. July 12

FRIDAY, Sept. 15, 1871.

Stevenson, Wm Hy, Penwortham, Lancashire, Mechanic. Sept 12

TUESDAY, Sept. 19, 1871.

Macdonald, Alex Jas John, New Bond-st. Sept 12

Liquidation by Arrangement.

FIRST MEETINGS OF CREDITORS.

FRIDAY, Sept. 15, 1871.

Anderson, Edwd, & Robt Burdes, Southwick, Durham, Lime Manufacturers. Sept 29 at 2, at office of Bell, Lambton-st, Sunderland

Barlow, Hy Jas, Manch, Ironmonger. Sept 28 at 2, at office of Burton, King-st, Manch

Barnes, John, Workington, Cumberland, Innkeeper. Sept 28 at 11, at office of Whitelock, Pow-st, Workington

Bond, Thos, Hinckley, Leicester, Beerseller. Sept 27 at 12, at the Crown Inn, Hinckley. Wilson

Booth, Thos, Burslem, Stafford, Potter. Sept 26 at 3, at offices of Hollinshead, Market-st, Tunstall

Buttenshaw, Richd Jas, Brunswick-villas, Hammersmith, Auctioneer. Sept 22 at 10, at offices of Dobson, Chancery-chambers, Quality-ct, Chancery-lane

Carr, John, Sheffield, Licensed Victualler. Sept 27 at 3, at offices of Parker & Son, Talbot-chambers, North Church-st, Sheffield

Clarke, Ralph, Sunderland, Durham, Builder. Oct 4 at 3, at office of Bell, Lambton-st, Sunderland

Clifford, Thos Hy, Park-st, Kennington cross, Laundryman. Sept 27 at 2, at 33, Gutter-lane. Plunkett, Gutter-lane

Cotton, Fredk, Burton-upon-Trent, Stafford, Grocer. Sept 29 at 11, at the George Hotel, Burton-upon-Trent. Perks, Burton-upon-Trent

Dennett, John, Stockham, Cheshire, Farmer. Oct 4 at 11, at offices of Moore, Bank-st, Warrington

Dixon, Jesse, Westhoughton, Lancashire, Farmer. Sept 29 at 3, at office of Dutton, Acresfield, Bolton

Eckersley, Wm, Bolton, Lancashire, Engineer. Sept 26 at 3, at offices of Ramwell & Pennington, Mawdsley st, Bolton

Fawcett, Thos Constantine, & Walt Mathers Shackleton, Leeds, Machine Makers. Sept 27 at 3, at the Wharton's Hotel, Park-lane, Leeds Bulmer

Foster, Thos Hoo, Margate, Kent, Jeweller. Sept 28 at 3, at office of Marshall, Hatton-garden

Fowler, John, New Alresford, Hants, Builder. Sept 26 at 12, at the Market Inn, Winchester. Killby, Southampton

Gladwin, Rowland Wm, Peter's-hill, Doctors'-commons, Mantle Manufacturer. Sept 27 at 12, at offices of Plunkett, Gutter-lane

Goodchap, Wm Edwd, Ironbridge, Salop, Bookseller. Sept 28 at 12, at offices of Southall & Son, Newhall-st, Birm

Halfhide, Alf Chas, Ross, Hereford, Watchmaker. Sept 25 at 3, at the Gt Western Hotel, Snow hill Station, Birm. Godfrey

Halliwell, Jas, Todmorden, York, Plumber. Sept 29 at 4, at the White Hart Hotel, Todmorden. Eastwood, Todmorden

Higginson, Abraham, Chowbent, Lancashire, Druggist. Sept 28 at 3, at offices of Ambler, King-st, Manch

Honeybone, Richd, Luton, Watchmaker. Oct 4 at 11, at office of Wetherfield, Gresham-bldgs, Guildhall. Shepherd, Luton

Jackson, Richd, Leeds, Share Broker. Sept 28 at 3, at office of Spirett, East-parade, Leeds

Johnson, Jas, Willenhall, Stafford, Fruiterer. Sept 26 at 3, at offices of Stratton, Queen-st, Wolverhampton

Jones, Joseph John Pay, Margate, Kent, Boot Manufacturer. Sept 28 at 12, at offices of Kingsford & Dorman, Essex-st, Strand. Sankey & Co, Margate

King, Chas Beeden, St Paul's-churchyard, Civil Engineer. Sept 25 at 1, at offices of Shea, King William-st

Lewin, Joseph Frisby, Bolton, Lancashire, Compositor. Oct 2 at 2, at office of Kyley, Bradford-bldgs, Mawdsley-st, Bolton

Lloyd, Jas Bowen, Moelgarnedd issa, Merioneth, out of business. Oct 5 at 12, at the Plas Coch Hotel, Bala. Adams, Ruthin

Mash, John, Worcester, Boot Dealer. Sept 27 at 3, at office of Tree, Broad-st, Worcester

Morris, Thos, Tipton, Stafford, Iron Merchant. Sept 27 at 12, at offices of Collis, Market-st, Stourbridge

Mullineux, Matthew, Walkden Moor, nr Worsley, Lancashire, Furniture Dealer. Sept 28 at 3, at office of Lynde, Princess-st, Manch

Muschamp, Chris Hy, Boston, Lincoln, Brazier. Oct 2 at 11, at the Corn Exchange Hotel, Boston. Welford, Portsmouth-st, Lincoln's-inn-fields

Mutton, Richd, Morice-town, Devonport, Devon, Draper. Sept 29 at 12, at offices of Boyes & Co, Frankfort-st, Plymouth

Nadin, John, East Worthing, Sussex, Builder. Oct 2 at 12, at offices of Stuckey, Old Steine, Brighton

Naylor, Wm, Kent-st, Southwark, General Dealer. Sept 25 at 4, at offices of Chipperfield & Sturt, Trinity-st, Southwark

Northrop, Jonathan, Saml Tetley, jun, Wm Harrison Tetley, & Geo Herring Ward, Bradford, York, Manufacturers. Sept 22 at 11, at offices of Terry & Robinson, Market-st, Bradford

O'Doherty, Patrick, Luton, Bedford, Printer. Sept 29 at 2, at offices of Scargill, Chancery-lane

Parker, Jas Caley, Chippenham-ter, Harrow-rd, Draper. Oct 4 at 3, at offices of Izard & Betts, Eastcheap. Goren

Paul, Edmd Manuel, Moorgate-st, Hosier. Oct 3 at 11, at offices of Ladbury & Co, Cheapside. Robinson, Basinghall-st

Pegg, Joseph Swithin, Lorrimore-rd, Walworth, Builder. Oct 3 at 12, at office of Davis, Harp-lane, Gt Tower-st

Phillips, Fras Albert, Queen's-rd, Peckham, Artist. Sept 23 at 3, at office of Musgabini, Basinghall-st

Relf, Joel, Uckfield, Sussex, Builder. Oct 2 at 12, at the Crown Hotel, Lewes

Richardson, Fredk, Birm, Grocer. Sept 27 at 3, at offices of Lomas & Co, Cannon-st, Birm. Griffin, Birm

Rickett, Mary, Sheffield, Corn Miller. Sept 26 at 2, at offices of Burdekin & Co, Norfolk-st, Sheffield

Robinson, Ray, Tovil, nr Maidstone, Kent, Miller. Sept 28 at 11.30, at the Bull Inn, Maidstone. Goodwin, Maidstone

Roper, Chas, Swansea, Glamorgan, Beerhouse Keeper. Sept 22 at 11, at offices of Morris, Rutland-st, Swansea

Rowland, John, Eglinton-rd, North Bow, out of business. Sept 23 at 10, at office of Dobson, Quality-ct, Chancery-lane

Scorah, Geo, Sheffield, Timber Merchant. Sept 27 at 12, at offices of Parker & Son, Talbot-chambers, North Church-st, Sheffield

Shaul, Benj Harris, Gosport, Hants, Baker. Sept 29 at 3, at offices of Feltham, North-st, Portsea

Sheppy, Oliver, Bristol, Grocer. Sept 25 at 12, at offices of Stanley & Wasbrough, Royal Insurance-bldgs, Bristol

Smith, Jas Knight, Newnham, Gloucester, Attorney-at-Law. Sept 27 at 2, at the Bell Hotel, Gloucester. Taynton, Gloucester

Smith, John Joseph, Camomile-st, Bishopsgate-st, Licensed Victualler. Sept 28 at 2, at offices of Neal, Finner's-hall, Old Broad-st

Sohst, Wm Geo, Aldermanbury, Comm Agent. Sept 28 at 11, at offices of Anderson & Son, Ironmonger-lane

Southern, John, Gateshead, Durham, Joiner. Sept 28 at 12, at offices Robson, Townhall, Gateshead

Stubbs, Joseph, Runcorn, Cheshire, Flat and Boat Builder. Sept 29 at 11, at office of Day, Market-pl, Runcorn

Teskie, Nathnl, & Hy Chas, Chalford, Gloucester, Shoddy Manufacturers. Sept 27 at 12, at offices of Taynton, Ashmeade-house, Gloucester

Verity, Thos, Leeds, Marble Mason. Sept 28 at 2, at offices of Rooke & Midgley, Bank-bldgs, Boar-lane, Leeds

Warne, Eliz, Red Lion-st, Holborn, Ironmonger. Sept 22 at 2, at offices of Cooke, Gresham-bldgs, Guildhall

Westcott, Richd, Aldershot, Hants, Butcher. Sept 22 at 12, at the South Western Railway Hotel, Aldershot. Deane, Walbrook

Woodruff, Mary Ann, Lincoln, Bootmaker. Oct 5 at 2, at offices of Moore & Ward, Lincoln

TUESDAY, Sept. 19, 1871.

Amos, Chris, Sicklinghall, nr Wetherby, York, Journeyman Joiner. Oct 13 at 2, at office of Harle, Bank-st, Leeds

Bradney, Saml, Cable-st, Ironmonger. Oct 10 at 2, at the London Tavern, Bishopsgate-st. Whites & Co, Budge-row

Britten, Jas Edwd, St Stephen's-ter, Bow, Commercial Traveller. Oct 2 at 2, at offices of Keighley & Porter, Gt Winchester-st-bldgs, Old Broad-st

Bromhead, Saml Sidney, & Chas Bromhead, Bristol, Ironmongers. Oct 2 at 12, at the Inns of Court Hotel, High Holborn. Plummer, Bristol

Buck, Geo, Lawrence-lane, Cheapside, Comm Agent. Oct 12 at 3, at the Masons' Hall Tavern, Masons'-avenue, Basinghall-st. Watson, Basinghall-st

Burrill, John, Birm, Tea Dealer. Sept 28 at 12, at the Queen's Hotel, Birm. Griffin, Birm

Chivers, Thos, Aberdare, Glamorgan, Ironfounder. Sept 29 at 12, at office of Barnard & Co, Temple-st, Swansea. Davies & Hartland, Swansea

Clinton, Lord Albert Sidney Pelham, Windsor, Berks, no trade. Oct 4 at 2, at office of Picard, St James's-st, Piccadilly

Cooke, Alfd Eugene Godolphin, Scarborough, York, Circus Proprietor. Oct 2 at 12, at office of Richardson, Queen-st, Scarborough

Dale, Wm Fenning, Chelmondiston, Suffolk, Butcher. Oct 3 at 12, at office of Pollard, St Lawrence-st, Ipswich

Diggon, Philip Harold, Lancaster-rd, Kensington, Auctioneer. Sept 26 at 3, at office of Brown, Bedford-row. Padmore, Westminster-bridge-rd

Dobbs, Wm, Queen's-rd, Bayswater, Baker. Oct 6 at 2, at office of Comfort, Grecian-chambers, Devereux-ct, Temple. Bartlett, Chandos-st, West Strand

Engelhardt, Louis Augustus, Fore-st, Importer of Foreign Goods. Sept 29 at 3, at office of Lewis, Wilmington-sq

Fairbrother, Mary Ann, & Jas John Fairbrother, York-road, Wandsworth, Lath Renders. Sept 29 at 3, at 12, Hatton-garden. Hope, Ely-pl

Fayers, Geo, Bradfield Combust, Suffolk, Bricklayer. Oct 4 at 11, at offices of Salmon & Son, Guildhall-st, Bury St Edmunds

Fisher, Elijah, Loughborough, Leicester, Engineer. Oct 2 at 12 at office of Goode, Market-pl, Loughborough

Flatman, John, Thurlow-pl, Lower Norwood, Ironmonger. Oct 4 at 2, at offices of Russell & Co, Old Jewry-chambers

Flooks, Wm, Warminster, Wilts, Chemist. Oct 2 at 3.30, at offices of Seagram & Wakeman, Warminster

Foulds, Joseph, Morley, York, Bootmaker. Oct 2 at 12, at offices of Scatcherd, Morley

Fox, Alfd, Charlton, Kent Builder. Sept 29 at 11, at offices of Norman, Lancaster-pl, Strand

Freckingham, Fras Hickling, East Shilton, Leicester, Farmer. Oct 5 at 11, at office of Fowler & Smith, Hotel-st, Leicester

Galtress, Thos, Lpool, Butcher. Oct 3 at 2, at offices of Harvey & Alsop, Castle-st, Lpool

Golding, Geo, Bath, Mason. Sept 29 at 11, at offices of Bartrum, Northumberland-bldgs, Bath

Graham, Jas, Maryport, Cumberland, Joiner. Sept 30 at 1, at the Crown and Mitre Hotel, English-st, Carlisle. Collin, Maryport

Hardwick, Geo Edwd, Norbiton, Surrey, Carpenter. Oct 5 at 3, at office of Buckland, Market-pl, Kingston-on-Thames

Harrison, John, Manch, Confectioner. Oct 4 at 3, at office of Sutton & Elliott, Brown-st, Manch

Hengst, Chas Fredk, Cedar-rd, Fulham, Engineer. Oct 2 at 12, at offices of Reed & Lovell, Guildhall-chambers

Hinge, Hy Edwd, Sittingbourne, Kent, Butcher. Oct 4 at 11, at office of Gibson, High-st, Sittingbourne

Linney, Wm, Weston-super-Mare, Somerset, Baker. Sept 29 at 11, at office of Chapman, Weston-super-Mare

Lister, Joseph, & Jas Lister, Keighley, York, General Dealer. Oct 4 at 1, at the Lord Rodney Inn, Church-green, Keighley. Paget, Skipton

Marsden, Joseph, Almondbury, York, Innkeeper. Oct 2 at 4, at office of Learoyd & Learoyd, Buxton-rd, Huddersfield

Martingell, Wm, Wooburn-green, Bucks, Professional Cricketer. Oct 5 at 1, at the Falcon Hotel, High Wycombe. Fell, Aylesbury

McIntosh, Geo, Montwearmouth Shore, Durham, Fruiterer. Oct 6 at 3, at office of Bell, Lambton-st, Sunderland

Morrison, Fras, Oldham, Lancashire, Painter. Oct 2 at 3, at the Mitre Hotel, Manch. Clark, Oldham

Murray, James, Wigan, Lancashire, Cab Proprietor. Sept 29 at 10.30, at office of Lees, King-st, Wigan

Page, Jas, Whitmore Reans, Wolverhampton, Stafford, Butcher. Sept 28 at 3, at office of Stratton, Queen-st, Wolverhampton

Palmer, Jas, & Chas Hill, Gloucester, Builders. Oct 5 at 1, at offices of Burrup & Co, Berkeley-st, Gloucester

Park, Chris, Carlisle, Draper. Oct 3 at 3, at office of McAlpin, Devonshire-st, Carlisle

Powell, Benj, Worcester, Boot Top Manufacturer. Sept 29 at 3, at office of Tree, Broad-st, Worcester

Rose, Chas Hy, Stonehouse, Gloucester, Draper. Oct 4 at 10.30, at 4, Athenæum, Corn-st, Bristol. Winterbotham, Stroud

Ryder, Chas Wm, Lpool, Merchant. Oct 4 at 1, at the Law Association Rooms, Cook-pl, Lpool. Laces & Co, Lpool

Shankland, Geo, Haverfordwest, Pembroke, Joiner. Sept 30 at 10.5, at the Townhall, Guildhall-sq, Carmarthen. Parry, Pembroke Dock

Sheppard, Benj, Manch, Bricklayer. Oct 5 at 3, at office of Lamb, Cowper-st, Manch. Gould, Manch

Slate, Jas Saml, Leather-lane, Bookbinder. Oct 3 at 2, at office of Terry, King-st, Cheapside

Spurr, Jas, Wakefield, York, Bricklayer. Sept 30 at 10, at the Stafford Arms, Wakefield. Spurr, Hull

Thomson, Saml, Railway-approach, London-bridge, Builder. Oct 10 at 3, at office of Downing, Basinghall-st

Thurgood, Joseph, Marylebone-rd, Corn Merchant. Sept 29 at 3.30, at Heginbotham's Sale Room, Mark-lane. Hall, Gray's-inn-sq

Tucker, Wm Hy, Wookey, Somerset, Baker. Oct 2 at 12, at office of Hobbs, Wells

Vaughan, Wm, Chirk, Denbigh, Tailor. Oct 4 at 3, at the Osborn Hotel, Bailey-st, Oswestry. Sherratt, Wrexham

Verkruzen, Theodor Bernhard, Castle-st, Holborn, Embroidery Manufacturer. Oct 14 at 4, at offices of Evans & Co, John-st, Bedford-row

Weaver, John, Worleston, Cheshire, Bootmaker. Oct 7 at 11.30, at the Lamb Hotel, Nantwich. Cooke, Winsford

Webber, Jas, & John Webber, Bristol, Builders. Sept 28 at 1, at offices of Hancock & Co, John-st, Bristol. Beckingham

Wilkinson, John Wm, & Herman Otto Stuchly, Savage gardens, Towerhill, Provision Merchants. Oct 5 at 12, at Masons' Hall Tavern, Masons'-avenue, Basinghall-st. Nicholson & Co, Lime-st

Williams, Chas, Sheffield, Hosier. Sept 29 at 12, at offices of Websters & Pickard, Hartshead, Sheffield

Williams, Wm, Pentre Brighton, Denbigh, Labourer. Oct 5 at 11, at office of Sherratt, Brynyffynnon Lodge, Hope-st, Wrexham

Willmott, Albert, Yatton, Somerset, Wheelwright. Sept 29 at 1, at office of Jacques, Baldwin-st, Bristol

Yoxall, Saml, Birm, Woollen Draper. Sept 28 at 3, at office of Mathews, Waterloo-st, Birm